No. 2. Vol 4.

SUPREME COURT OF THE UNITED STATES.

No. 180.

RICHARD WALDEN & AL., HEIRS AND REPRESENTATIVES OF AMBROSE WALDEN, DECEASED, APPELLANTS,

vs.

THOMAS BODLEY'S HEIRS AND REPRESENTATIVES, ROBERT POGUE'S HEIRS AND REPRESENTATIVES, & OTHERS.

APPEAL FROM THE CIRCUIT COURT U. S. FOR KENTUCKY.

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BODLEY'S heirs
vs.
WALDEN'S heirs.

Pleas before the honorable Thomas B. Monroe, one of the judges of the United States of America, in and for the 8th circuit and district of Kentucky, at the capitol, in the town of Frankfort, at the May term thereof, in the year of our Lord 1847.

Be it remembered, that heretofore, to wit, at the November term of the court aforesaid, to wit, on the 4th day of November, 1840, came the defendants aforesaid, by their counsel, and filed the following mandate of [the] Supreme Court of the United States, to wit:

Mandate.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America, to the honorable the judges of the circuit court of the United States for the district of Kentucky, greeting:

Whereas, lately, in the circuit court of the United States for the district of Kentucky, before you, or some of you, in a cause between Thomas Bodley's heirs, Robert Pogue's heirs, and others, complainant, and Ambrose Walden, defendant, the decree of the said circuit court was in favor of the said complainants, and against the defendant, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears. And whereas, in the present term of January, in the year of our Lord one thousand eight hundred and forty, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was agreed by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decrees of the said circuit court be and the same are hereby affirmed, with the modification that this cause be and the same is hereby remanded to the said circuit court with directions to that court to take such further steps in regard to the improvements, and to the putting of Walden or his representative in possession of the premises recovered in the ejectment suits, as shall be conformable to the decree hereby affirmed, and to the principles of equity, Feb. 8.

You, therefore, are hereby commanded that such further proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and forty.

WM. THOMAS CARROL,
Clerk of the Supreme Court of the United States.

And afterwards, to wit, at the May term of the [court,] to wit, on the 10th day of May, 1841, came Bodley's heirs and Pogue's heirs in the above suit, by their counsel, and on his motion dedimus is awarded either party to take deposition; and on the further motion of said counsel, leave is given the surveyor to amend the surveys filed in the above suits: whereupon,

Order survey.

It is ordered that the surveyor of county do go on the land in controversy (in the above suit) between the parties, on the day of next, if fair, if not then on the next fair day, and then and there survey and lay off the same as either party may direct, having due regard to all deeds and other evidences that may be produced, report all matters of fact specially, and return one fair plat and certificate thereof into the clerk's office of this court thirty days at least before the day of trial; and the marshal, or one of his deputies, is directed to attend the said survey, to remove force should any be offered.

Death of defendant Walden suggested.

And afterwards, to wit, at the November term of said court, to wit, the 12th November, 1841, came Robert Wickliffe, esq., and suggested the death of the defendant, Ambrose Walden, which is not denied.

And afterwards, at a subsequent day of the November term aforesaid of said court, to wit, the 13th day of November, 1841, came Richard Walden, &c., by their counsel, and on his motion leave is granted them to file their bill of revivor herein, which is accordingly done; and on motion [of] complainants, it is further ordered that this cause be remanded to the rules; which bill of revivor is as follows, to wit:

Bill of revivor.

To the honorable the judges of the circuit court of the United States for the district of Kentucky.

Richard Walden, John Walden, William Walden, George Carter and Judith Carter, his wife, the said Richard, John Waldren, William and Judith, being the only children and heirs of Ambrose Waldren, deceased, respectfully represent, that their ancestor, Ambrose Waldren, on the day of 1797, caused actions of ejectment to be served, one on Jonathan Rose, one on Charles Rutter, one on William Allen, one [on] Abram Shockey, and one on Angel Chapin, for 1,333 acres of land; that said defendants severally appeared each with Lewis Craig, their landlord, and plead, &c.; that said suits were continued until the term of the term of the late district court of Kentucky, when judgments were rendered for your orators; that the defendants in possession had been for several years, say from about the 1793, settled on the land of William Waldren as his general tenants, under his claim by Lewis Craig, claiming an undivided interest of one-third under Simon Kenton, the locator of Waldren's entry; that after the recovery

of the judgments, which were rendered in the year 1800, a certain Thomas Bodley, and others, pretending equitable titles to said Waldren's land by adversary claims, and being let into the possession by said Craig and others, filed their bill, and obtained an injunction against your orators' ancestor to take possession, &c., which injunction was continued, &c., and such steps taken as will appear from the record, when the same was dismissed, &c., and an attempt made to obtain possession; but the writs of possession were quashed, when your orators ancestor's attorney obtained rule on the defendants to show cause why the demises should not be extended, of which rules the defendants had due notice, as your orators believe and charge; that the motions were entered on the motion docket in the year 1817, and were all continued down on the docket until one case was taken up, and on a decision of the court the motion was overruled, and judgment against Waldren, who took that case by writ of error to the Supreme Court, where the writ was dismissed for the want of jurisdiction; but the court intimated an opinion that this court should have granted the motion. On this opinion being rendered, this court, at the term of the court, 1819, the motion having been continued down on the motion docket until said last named term, ordered all the demises to be extended for the term of 50 years, which was accordingly done, when an order was made superseding the execution until next following, before which time Bodley, Rose, and others, obtained a new injunction, which, by one contrivance or another, have been continued down until a final decree was rendered dismissing the bill in part, when your orators took out executions, which were quashed because Lewis Craig, the landlord, had died, on which Waldren's counsel sued out scire facias against the said Craig's heirs and the sur-tenants, on the return of which scire facias this court decided that the orders of this court, extending the demises, were void, and gave judgments against the scire facias; on which judgments quashing the scire facias, Waldren sued out writs of error to the Supreme Court, which judgments were reversed, and the writs of scire facias were again reinstated; but before this was effected, the demises as extended had expired, on which the counsel of Waldren moved to extend the demises so far as to enable the court to revive the judgments against the defendants and sur-tenants; but on due notice being served of the motions, and the motion being heard, the court being equally divided, the motion was overruled, whereby all remedy at law is forever taken away from your orators as the heirs of said Waldren, or the lessee of Walden for them, to have the benefit of the said judgments, or either of them.

Your orators would state that after the date of the judgments aforesaid, said Ambrose Waldren became insane and lunatic; but that the said Waldren was, through his friends, nearly if not always represented by able counsel, except when by deaths or removals his attorney ceased to practise in this court; that from the best information they can get from the records and other ways, the following gentlemen attended to this cause in succession: William Clark, until his death or removal; James

Brown, deceased, until his removal out of the State; Joseph H. Daviess, until his death; after his death, Martin D. Hardin, until his death; then Soloman P. Shorp, until his death; and then Robert Wickliffe, until this day; and your orators think that the records of the said suits at law, and the bills, answers, decrees, and orders in the chancery suits, will abundantly show that the said Waldren has been by no fault or default of his own, but by the interposition of this court, or the acts of the *of the* complainants, kept out of possession.

Your orators state, that the said Waldren, by his attorney, pending the suit of Bodley, &c., against him, filed his cross bill praying a decree for possession, and an account of rents and profits, &c.; to which the defendants answered, and which is still pending before this court, and made a part of this bill. Your orators also state, that on the final decree in the causes of Bodley and others, against Waldron, this court decreed that Waldron should convey certain portions or parts to the complainants, and that their bill of injunction should be dismissed, but failed, and refused to make any order that the complainants should give up the lands they held of said Waldren, other than the land decreed to the complainants; from this decree the said Waldren appealed to the Supreme Court, which court decreed that the decree should be affirmed, with the modification that this court should by its final decree put the said Waldron in possession of all the lands recovered by said judgments, not decreed to the complainants. That since the said decree, said Waldron, without being put into possession, has departed this life, and the title to said land has descended to your orators as his heirs.

Your orators state, that the complainants, in the original bill have heretofore refused, and will not revive, on their part, the said decree and proceedings under the order of the Supreme Court; and although your orators have filed their cross bill they apprehend that it is necessary for them, by the special order of this court, to have the said suit also revived and stand in their names, and that on the final hearing of said case, together with the cross bill, your honors make a special order and decree to put your orators into possession of the land held by the complainants, not decreed to them as aforesaid.

Your orators state, that the rents, profits, and injury done to the lands amount to a large sum, and they pray that some commissioner of this court be also ordered to take an account of the rents and profits; and that on the final hearing on both the original and cross bills, that the decree of the Supreme Court be carried into effect, and such further relief be afforded to your orators as to equity shall appertain; and they will ever pray, &c. WICKLIFFE.

Whereupon the following subpœna in chancery issued, to wit:

Subpœna in chancery.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon Harry J. Bodley, Wm. S. Bodley, Hugh S. Bodley, Wm. H. Hurst, and Ann J., his wife, late

Ann Bodley, Edmund B. Church, and Maria J., his wife, late Maria J. Bodley, John F. Bodley, Catherine E. Bodley, Thomas Bodley, C. S. F. Bodley, Ellen P. Bodley, George W. J. Bodley, and Catharine H. Bodley, widow, heirs and representatives of Thomas Bodley, deceased; James Pogue, John Pogue, Lindsey Pogue, Edwin Pogue, Robert Pogue, Samuel Garrison, and William Andrew Mackey, heirs and representatives of Robert Pogue, deceased; John Patton and Nancy Patton, his wife, Thomas Patton and Amanda Patton, his wife, James Campbell and Mary Campbell, his wife, James Lindsey and Nancy Lindsey, his wife, Henderson Duncan, Alfred Duncan, Mitchell Duncan, William Duncan, Jane Duncan, Martha Duncan, Benjamin Duncan, Joseph Duncan, Elizabeth Duncan, and Jane Duncan, devisees of David Duncan; and Judith Lacy, Susan Lacy, Thomas Lacy, Charles Lacy, Walter Lacy, and Daniel Lacy, children and heirs at law of Elizabeth Lacy, deceased, one of the children and heirs at law of Benjamin Clark, deceased; Daniel Clark, Susan Sumrall, Thomas Clark, Mary H. McMillan, heirs *heirs* of Benjamin Clark, deceased; Jonathan Rose, Benjamin Umpstead, Robert Taylor, Robert Taylor, jr., John D. Taylor, Eliza Sandridge, and William Drake, heirs and representatives of Abraham Drake, deceased, to appear before the judges of our 8th circuit court of the United States of America, in and for the district of Kentucky, at the Capitol, in Frankfort, on the first Monday in February next, to show cause, if any they can, why the complainants' bill should not be revived according to the prayer thereof against them, in the names of Richard Walden, George Carter and Judith, his wife, late Judith *Carter*, John Walden and William Walden, children and heirs at law of Ambrose Walden, deceased, and have then there this writ.

In testimony whereof Roger B. Taney, esq., chief justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 21st day of December, A. D. 1840, and in the 65th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Upon which subpœna the marshal made the following return:

Marshal's return.

Executed on H. J. Bodley, Cath. E. Bodley, C. S T. Bodley, George W. J. Bodley, and Cath. H. Bodley, November 19, 1840, and on Lindsay Pogue, Edwin Pogue, Sam. Garrison, W. A. Mackey, Jos. Duncan, Susan Lacy, now Boyd, Thos. Lacy, Daniel Clark, Susan Sumrall, Thos. Clark, Mary H. McMillan, now Miller, Ben. Umstead, Rob. Taylor, sr., R. Taylor, jr., John D. Taylor, Virginia Triplett, late Clark, John Pogue, Robert Pogue, Jona. Rose, and William Drake are dead. The other defendants are no inhabitants of this district.

JNO. McCALLA, *M. K. D.*

Death of E. Pogue suggested.

And afterwards, to wit, at the May term of the court aforesaid, to wit, on the 4th day of May, 1842, came Wm. Ousley, esq., and sug-

gested to the court that Edwin Pogue, a party to the foregoing cause, has departed this life, which appeared to the satisfaction of the court, which fact is not denied.

Revivor in names [of] Walden's heirs.

And afterward, at a subsequent [day] of the May term aforesaid of said court, to wit, the 7th day of May, 1842, on motion of R. Wickliffe, esq., counsel for Walden's heirs, it is ordered that suit stand and is revived in the names of Richard Walden, John Carter and Judith, his wife, late Judith , John Walden, and William Walden, children and heirs at law of Ambrose Walden, deceased; also in the names of Harry J. Bodley, Catharine E. Bodley, Chas. S. T. Bodley, George W. J. Bodley, and Catharine H. Bodley, and William S. Bodley, Wm. H. Hurst and Ann, his wife, late Ann J. Bodley, Edmund B. Church and Maria, his wife, late Maria J. Bodley, Catherine E. Bodley, and Jno. T. Bodley, heirs of Thomas Bodley; and that said suit also stand and be revived in [the] names of Lindsay Pogue, heir of Robert Pogue, deceased; whereupon this cause was remanded to the rules, and leave is given the defendants to answer supplemental bills or other matter at the June rules, and the time for proof limited to the 1st day of next term, when the cause may be set for hearing as on the expiration of a commission.

And afterwards, to wit, at the November term of the court aforesaid, to wit, on the 26th day of November, 1842, came the parties by their counsel, and by consent leave is given Walden's heirs to file a bill of revivor against Pogue's heirs, and the answer of James Tibbs, Wm. Jones, Philip Palmer, and Thomas Blain, heretofore lodged, are now filed, and leave is given John N. Preston to answer, and this cause is continued on the rules, and leave to both parties to take depositions.

The answer of Tibbs, Jones, Palmer, and Blain is as follows, to wit:

Answer of Tibbs, &c., Blain, &c.

The joint and several answer of James Tibbs, Wm. Jones, Philip Palmer, and Thomas Blair to an amended bill or bills, and bill of revivor, exhibited against them, &c, in the circuit court of the U. S., for Kentucky district, by the heirs of Ambrose Walden, deceased.

These respondents, saving and reserving the benefit of exceptions to the numerous errors, misstatements, and imperfections in said bills contained, for answer thereto, say, that they are advised that chancery has no jurisdiction of the matters in said amended bills, cross bills, &c., contained, and for want of equity on the face of said bills these defendants do demur. Further answering they say, that they heretofore filed their answers to a cross bill exhibited herein, and referred to various exhibits in said answers, setting forth how they respectively claim the land held by them, and they here again rely upon said answers, and pray that they may be taken and held as part of this answer. These respondents deny that the land was ever held by the tenants of Ambrose Walden, or in any manner under him, or that those against whom judgments in ejectment were recovered were general tenants of said Wal-

den, or held or claimed to hold all the land covered by the patent of said Walden. On the contrary, they allege and charge that the said tenants in possession, against whom judgments were rendered, held each of them by separate and distinct *notes* and bound, and these defendants deny that they hold any part of the land which was recovered in either of said actions of ejectment, except respondent Blain, thirty acres of whose land was not included in any of the tenements for which a judgment in ejectment was recovered. As to the residue of the land of respondent Blain, he says that he has set forth his derivation of title in his original answer herein before filed, and that he, and those under whom he claims, have had more than twenty years peaceable and uninterrupted adverse possession thereof before the commencement of this suit. When Pogue purchased of Shockey, as in his original answer set forth, Shockey was then in possession, and said possession was regularly continued through Pogue, Tilton and Huston, Hambrick and Fitzgerald, to your respondent Blain, who has ever since continued in the adverse possession.

These respondents deny that any agreements were ever made for or on their behalf by any one respecting the trial of any portion of this controversy. They deny all fraud, and claim to be innocent and bona fide purchasers for a valuable consideration without notice of the claim of the said Walden. They do not know that the complainants in the bill of revivor are the heirs at law of Ambrose Walden, or entitled in any manner to represent him, and they call upon complainants for proof of all allegations to this effect. These respondents state that Ambrose Walden in his lifetime conveyed 200 acres of the said tract of land to Pogue, a copy of which deed is referred to, and prayed to be taken as a part of this answer. They pray that said deed may have in the trial of this suit whatever effect it may be entitled to. As to all matters which it is alleged will appear from the record, these respondents are advised it is unnecessary for them to respond to, and they call for the production of the records in all such cases as the best evidence of the facts stated, and unless they are produced they deny their existence. These respondents also state that they have each of them been in the actual possession of the land claimed by them respectively, either by themselves or those under whom they claim by adversary possession, claiming by title deducible of record from the commonwealth, either in law or equity, for more than seven years before the commencement of this suit, and they separately rely upon the various acts of assembly of limitations, as well as the lapse of time, and the grossly negligent manner in which the suits have been prosecuted. Having fully answered, they deny all allegations not herein admitted, and pray to be hence dismissed with their costs, &c.

JAS. TIBBS,
WILLIAM JONES,
PHILIP PALMER,
THOMAS BLAIN.

COMMONWEALTH OF KENTUCKY,

Franklin county, sct:

This day personally appeared before the undersigned, an acting justice of the peace in and for the county aforesaid, James Tibb, William Jones, Philip Palmer, and Thomas Blain, who severally made oath that the matters and things, in the within answer contained, so far as detailed from their own knowledge are true, and so far as detailed from the information of others, they believe to be true.

Given under my hand, this 20th of June, 1842.

JAMES SHANNON, *J. P.*

And afterwards, to wit, at rules held in the clerk's office before the judge, on the 17th day of August, 1842, Marshall Key is appointed to take the testimony of such witnesses as may be produced before him, by either party, for examination on the interrogatories filed by them respectively.

And afterwards, to wit, on the 3d day of December, 1842, Walden's heirs by their counsel filed the following amended bill, to wit:

Amended bill.

To the honorable the judges of the circuit court, &c., in chancery sitting: William Waldron, &c., heirs of Ambrose Waldron, deceased, would by way of amendment state, that Edwin Pogue, one of the heirs of Robert Pogue, has departed this life, leaving his heirs at law and children E. Pogue, Eliza J. Pogue, Robert Pogue, Trimble Pogue, Amanda Pogue, Maria Pogue, and that they are informed that Andrew W. Mackey, Samuel Garrison, Robert Garrison, John C. Garrison, Gideon B. Garrison, and Pogue, son of John Pogue, are also heirs of Robert Pogue, deceased, or in some way interested in the present suits and controversion. That J. D. Taylor, Eliza Sandridge, and Robert Taylor are heirs of Drake, deceased, or interested in the controversy. They are therefore made parties, and process prayed against them by which they may answer make to this, and all the bills, cross bills, &c., filed in the cases depending before the court, that the proper decree be rendered; and your orators will pray &c.

R. WICKLIFFE.

Upon the filing of which the following subpœna issued:

Subpœna—Amended bill.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon E. Pogue, Eliza J. Pogue, Robert Pogue, Trimble Pogue, Amanda Pogue, Andrew W. Mackey, Samuel Garrison, Robert Garrison, Jno. C. Garrison, Gideon B. Garrison and Pogue, (son of John Pogue,) heirs of Robert Pogue, dec'd, and J. D. Taylor, Eliza Sandridge, and Robert Taylor, heirs of Drake, deceased, to appear before the judges of our eighth circuit court of the United States of America, in and for the district of Kentucky, at

the capitol in Frankfort, on the first Monday in January next, to answer a bill and amended bill in chancery, exhibited against them and others in our said court, by William Waldron and others, and this they shall in nowise omit, under the penalty of $400 each; and have then [and] there this writ.

In testimony whereof Roger B. Taney, esq., chief justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 3d day of December, A. D. 1842, and in the 67th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

The marshal's return is as follows:

Not executed, Jan. 2d, 1843.

W. B. BLACKBURN, JR., *M. K. D.*

And on the 26th day of December, 1842, the following alias subpœna issued, to wit:

Alias subpœna on amended bill.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon E. Pogue, Eliza J. Pogue, Robert Pogue, Trimble Pogue, Amanda Pogue, Maria Pogue, heirs of Edwin Pogue, deceased, and Andrew W. Mackey, Samuel Garrison, Robert Garrison, John C. Garrison, Gideon B. Garrison, heirs of Robert Pogue, and ——— Pogue, and ——— Pogue, son of Robert Pogue, also heir of Robert Pogue, citizens of the State of Kentucky, also J. D. Taylor, Eliza Sandridge, and Robert Taylor, are heirs of ——— Drake, deceased, to appear before the judges of our eighth circuit court of the United States of America, in and for the district of Kentucky, at the capitol in Frankfort, on the first Monday in March next, to answer an amended bill in chancery, exhibited against [them] in our said court by Richard Walden, George Carter, and Judith, his wife, late Judith Carter, John Walden, and William Walden, heirs and representatives of Ambrose Walden, deceased, citizens of the State of Virginia, and this they shall in nowise omit under the penalty of four hundred dollars; and have then there this writ.

In testimony whereof, Roger B. Taney, esq., chief justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 26th day of December, A. D. 1842, and in the 67th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

The defendants are to enter their appearance in the within suit, in the clerk's office, on or before the return day of this subpœna, otherwise the bill will be taken for confessed.

Attest: JNO. H. HANNA, *C. K. D. C.*

Upon which the marshal made the following return:

Marshal's return.

Executed on E. Pogue, Eliza J. Pogue, Robert Pogue, T. Pogue, Amanda Pogue, Maria Pogue, heirs of Edwin Pogue, deceased, on Samuel Garrison, Robert Garrison, Jno. C. Garrison, Gideon B. Garrison, heirs of Robert Pogue, and Pogue, Eliza Sandridge, and Robert Taylor on the 9th day of February, 1843, by delivering to each of them a true copy of the within, and on Andrew W. Mackey, J. D. Taylor, February 10th, 1843, by delivering to them a true copy of the within. J. K. GOODLOE, *D. M.*

For W. B. BLACKBURN, Jr., *M. K. D.*

Alias subpœna on amended bill.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon E. Pogue, Eliza J. Pogue, Robert Pogue, Trimble Pogue, Amanda Pogue, Maria Pogue, *Andrew*, heirs of Edwin Pogue, deceased, and Andrew W. Mackey, Samuel Garrison, Robert Garrison, Jno. C. Garrison, Gideon B. Garrison, heirs of Robert Pogue, and Pogue, son of Robert Pogue, also heirs of Robert Pogue, citizens of the State of Kentucky, also J. D. Taylor, Eliza Sandridge, and Robert Taylor, heirs of Drake, deceased, to appear before the judges of our eighth circuit court of the United States of America, in and for the district of Kentucky, at the capitol, in Frankfort, on the first Monday in March next, to answer an amended bill in chancery, exhibited against them, in our said court, by Rich. Walden, George Carter, and Judith, his wife, late Judith *Carter*, John Walden, and William Walden, heirs and representatives of Ambrose Walden, deceased, citizens of the State of Kentucky, and this they shall in no wise omit, under the penalty of four hundred dollars each, and have then there this writ.

In testimony whereof, Roger B. Taney, esq., chief justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 26th day of December, A. D. 1842, and in the 67th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

This subpœna to be executed on Pogue only, and the defendant, Pogue, is to enter his appearance on or before the return day hereof, otherwise the bill will be taken for confessed.

Attest: JNO. H. HANNA, *C. K. D. C.*

Marshal's return.

Executed on William L. Pogue, Feb. 6th, 1843.

J. W. DAVIS, *Deputy.*

For W. B. BLACKBURN, *M. K. D.*

And afterwards, to wit, at the May term of the court aforesaid, to wit, on the 19th day of May, 1846, (until which time this cause has been regularly continued on the rules,) came again the complainants, by their counsel, and the defendants, Samuel and Jane Garrison, and

Wm. L. Pogue, and the heirs of Edwin P. Pogue, who was an heir of Robert Pogue, by their counsel, and Umstead, Blair, and Proctor.

And on motion of the complainants, Richard Walden, &c., the original case of Bodley, Pogue, &c., on the bill of 1825, consolidated with the cases of Clarke's heirs and Duncan's heirs against the same, and the bill of them, R. Walden and others, filed at November term, 1841, for the purpose of reviving said case, and having the possession of the land, according to the mandate of the supreme court, came on to be heard, and was heard, in part, and the above case of Walden vs. Bodley, and was further argued.

And at a subsequent day of the May term aforesaid of said court, to wit, the 20th day of May, 1846, came the complainants, by their counsel, and the defendants, Samuel and Jane Garrison, and Wm. L. Pogue, and the heirs of Edwin P. Pogue, all heirs of Robert Pogue, deceased, and Benj. Umstead, Thos. Blair, and Jno. N. Proctor. And the causes were fully heard; but the court, not being advised, took time, &c.

At a subsequent day of the May term aforesaid of said court, to wit, the 20th day of May, 1846, came the complainants, by their counsel, and the defendants, Samuel and Jane Garrison, and William L. Pogue, and the heirs of Edwin P. Pogue, all heirs of Robert Pogue, deceased, and Benjamin Umstead, Thomas Blair, and John N. Proctor, and the causes were fully heard; but the court, not being advised, took time, &c.

Order—reference to master.

And at a subsequent day of the May term aforesaid of said court, to wit, the 10th day of August, 1846, the master is directed to lay down, in connexion, a plat of the land granted by the patent to A. Walden, as represented on the plat referred to in the final decree of 1834, beginning at the corner shown to the surveyor by Simon Kenton, and represented by figures 7, 8, 9, 10, on that plat, and the land embraced by the entry of Walden, as established by that decree, and shown on the plat; and then upon this connexion show the 400 acres of land, which was laid off and assigned by the commissioner of Fleming county to Lewis Craig, as locator, as represented on the plat and survey made by Whitfield Craig, on Feb. 4th, 1794, which constitutes part of the several agreed cases of the ejectments of Walden against Craig and Chapin, Craig and Allen, Craig and Rutter, Craig and Shockey, and Craig and Rose; and that he then represent, upon the diagram of 400 acres, so laid off for Craig, the several parcels thereof which were sold by him to the said Rose, Allen, and Rector, and the parcel sold by Rose, out of his purchase, to A. Shockey, and the parcel sold by Allen, out of his purchase, to the said Chapin, and which the said Chapin, Allen, Rutter, Shockey, and Rose, were respectively possessed at the commencement of said actions.

Order—reference to A. Owens.

And at a subsequent day of the May term aforesaid of said court, to wit, the 15th day of August, 1846, the master made a report under the order made herein at the present term. It is found insufficient, because

of his want of data, which can be obtained only by work upon the ground.

It is therefore ordered, that the same matter be referred to Atheleton Owens, surveyor; he will be furnished with copies of these papers:

1st. The final decree of 1834. 2d. The plat made out by himself, on which the decree was rendered, and to which it refers. 3d. The survey and division plat filed in, and constituting part of, the record of the ejectments made out by Whitfield Craig. 4th. A copy of the order of reference to the master at the present term, and his report thereon. 5th. Extracts from the depositions since the final claim of 1834, which show how the several parcels of land in controversy have been sold, claimed, and occupied, which shall be selected and designated by the counsel of the parties respectively. 6th. He is directed to go on the ground, and, having ascertained the land, which is covered at once by both the entry and patent of Walden, and designated in the plat by letters and figures 8 F. S., N. I. 7, he will ascertain, by actual survey, the parcel of 400 acres assigned to Lewis Craig as his part as locator. He will find the several corner trees, or the positions on which they stood. If this cannot be done, he will fix the corners according to the rules in such cases, and show how he does it. He shall then lay down, so far as he shall be enabled to do it:

1st. The several parcels of the 400 acres sold by Craig to Jonathan Rose, Charles Rector, and Wm. Allen. 2nd. He will show the parts sold by Rose to Shockey. 3rd. He will show the part sold by Allen to Chapin. 4th. The part of Allen's purchase which he sold to Drake. It is required that the parcel of land within the locator's part, in the possession of each of the defendants, Rose, Allen, Rector, Shockey, and Chapin, at the commencement of the ejectments against them, shall be represented on the plat distinctly, if practicable; if not, then as nearly as it can be done, so that it may certainly appear what land was recovered in each action. It is then required that each subdivision and each union of these parcels of land, or any of them, and every redivision or other change of parcels which occurred since the date of the judgments in ejectment down to the present time, shall be ascertained and stated in convenient form; a diagram will be made showing the several parcels into which, to locators, part of the land was divided, and how each parcel was occupied on or about these several dates, May, 1800, January, 1815, May, 1824, December, 1834, May, 1841, and the present date. Let there be one separate diagram for each date.

In the report the surveyor will state the document, deposition, or other means by which he shall have ascertained the facts he states, and how he obtained the data of his plats and objects represented thereon. The surveyor will proceed upon the application of either party, showing he had given reasonable notice to the other. He will inspect and report all the title-papers produced to him. He may do any other work on the ground, and lay down upon the plats the result of such work, or any other objects found upon, or in connection with, the land which either party may direct, and represent the same in his report.

And afterwards, to wit, at the May term of the court aforesaid, to wit, on the 8th day of June, 1847, on the bill of revivor, &c., of Walden's heirs, and proceedings directed by mandate of supreme court.

Decree.

This day came the heirs of Walden, by their counsel, and Benjamin Umstead, Thos. Blair, and John N. Proctor, by their counsel, and the report of the surveyor directed at the last term having been returned and filed, the cause came on, and was again heard. The heirs of Walden read their bill of revivor, filed November term, 1841. Thos. Blair read his answer, filed November 26th, 1842. The defendant Umstead read his answer, filed November 26th, 1842; and the defendant Proctor read his answer, together with the petition therein referred to by the agreement of the parties, now filed, as of the November term, 1842, in the stead of his answer, said to have been filed at that time, but since mislaid. Walden's heirs read the report of the master, filed at the May term, 1846, and the report of the surveyor, made according to the order of that term, and filed here at the present term, and the records of the several actions of ejectment—Doe, on the demise of Walden, against Craig and Rector; the same against Craig and Allen; same against Craig and Rose; same against Craig and Chapin; same against Craig and Shockey; together with the report of the surveyor made and filed in said cases, the survey and plat made by Whitfield Craig, and the papers referred to in the agreement of facts on which those cases were decided. Walden's heirs read the following depositions: Eli T. Metcalfe, Thomas Walden, Joseph Duncan, and John J. Morris. The defendant Umstead read the deed of Johnson and wife to himself; the defendant Blair read the bond of Pogue to Tilton and Huston, articles of agreement between Tilton and Huston and Hambrick, with the assignment thereof to Fitzgerald, the deed of Pogue to Fitzgerald, and the deed of Fitzgerald to himself, Blair. The defendant Proctor read the deed from J. Rose to J. H. Rose, and the deed from J. and J. H. Rose to himself, Proctor; and the defendants, Umstead, Blair, and Proctor, read the depositions of David L. Runyon, James Tibbs, Elijah Johnson, Leroy Dobbyns, Ebenezer Lynn, Henry Bruce, Elizabeth Patton, William D. Stout, Robert Ewing, Athelston Owens, and James Duncan.

And thereupon the cause was argued by counsel. On consideration whereof, it does appear to the court that the matter has been brought on in a very informal and irregular mode; but it is supposed the condition of the case may answer in the stead of a brief petition and rule, so that the mandate of the supreme court may be executed, and the case ended.

The land in real controversy is land for the possession of which Walden recovered judgment in his actions of ejectment against Rector Allen, Jonathan Rose, Shockey, and Chapin, and their co-defendant Craig, which is within and common to both Walden's entry and his patent, as established by the decree of this court; it is all within the four

hundred acres which had been surveyed off for Craig, the vendor of his co-defendants, as his, the locator's, part of Walden's survey; no other land was sued for or recovered in the ejectment. It is found designated on the plat of the surveyor, returned herein at the present term, by the letters and figures 2, 1, a b, d c, 2; being all of the parcel of 400 acres found on the plat in a quadrangular figure, except a triangle off the two southern corners; and the judgment of the court is now required to dispose of the possession of the several parcels of the land so designated. It appears that the supreme court affirmed the final decree of this court as a decree of its date, but that, on the ground of things which it was ascertained in that court had occurred after the cause had been thus determined here, and had left this court, it modified its affirmance by ordering that, on the proceedings therein directed, Ambrose Walden, or his representatives, be put into the possession of the premises "recovered in the ejectment suits," but with a reservation of "any title or claim which the tenants, or any part of them, might set up under the statute of limitations."

It therefore seems to the court that, on this proceeding against Benjamin Umstead, one of the complainants in the original bill, the heirs of Walden must have awarded to them the possession of the parcel of land designated in the report of the surveyor, filed herein at the present term, by the figures 2, 21, 22, 12, 13, 14, 16, 17, 18, 19, 20, 2, and as containing one hundred and forty-nine acres 28 poles, now in his possession, when he, Umstead, shall have been paid the amount which the value of the improvements upon the land exceeds the rents and profits and damages thereof, or it shall be ascertained that there is no such excess on the account to be taken. It does not appear that Umstead has had the possession of any other part of the land since the commencement of these proceedings; and as to the residue of the land the proceedings *is* dismissed, without prejudice as to the parcel of land designated on the plat by the figures 21, 3, 22, and 21, containing, according to the surveyor's report, fourteen acres, two roods, and thirty-six poles, sold by Umstead, as represented in 1813, and now in the possession of the widow of William Craig.

It seems to the court that the Waldens will be entitled, on the proceedings against the defendant, John N. Proctor, to have the possession of the land designated on the plat by the figures 15, 16, 17, 18, 19, 20, 15, and as containing nineteen acres, three roods, and twenty-eight poles, in his possession about the time of the commencement of this proceeding, but now in the possession of Jeremiah Wells. Proctor was not a party to the original bill, but he appears to have purchased this parcel of the land, and to have acquired the possession of it from Sandridge, one of the complainants in the original bill, pending the suit; and when the value of the improvements shall have been paid, or found compensated by the rents, profits, and damages of the land, according to an account which will be taken, the Waldens will be entitled to an order for process of possession. It does not exactly appear when Wells acquired the possession of this land; but he is no party, and unless his

position be such as to bind him, he shall not be *concluded* in respect to any right or claim he may show in respect to the matter to be effected.

It seems to the court, that the heirs of Walden are not entitled to obtain, by this proceeding against John N. Proctor, the possession of the parcel of land designated on the plat of the survey by the letters and figures 1, a, b, 4, 5, 6, 11, 1; it was acquired of one of the complainants in the original bill, but at a time when there was no litigation pending. Jonathan H. Rose purchased this land in 1814 of Jonathan Rose, then in possession for upwards of seven years under a junior patent, and thereupon took possession, and resided upon it until he sold it to Proctor, the defendant, who resided upon it until about the time of the commencement of this proceeding, when he sold it to Kinkead, now in possession. And it seems to the court that the possession so held by Jonathan H. Rose, and his successor, Proctor, for upwards of seven years before the original bill in this case was filed, and upwards of twenty years before he was in anywise a party to any litigation concerning the land, does constitute a bar under the statute of limitations, and that this part of the case is within the exception of the decree and mandate of the supreme court, and that the Waldens are not, upon the principles of equity, entitled to have the possession of this part of the land; and therefore their bill, and proceedings in respect to it, are dismissed.

It seems to the court, that the Waldens will be entitled against the defendant, Tho. Blair, to have the possession of the land designated on the plat by the figures 4, 12, 13, 14, 4, and as containing fourteen acres, three roods, and eight poles. It is found in the possession of Blair, claiming to hold it by purchase from Pogue, one of the original complainants. He does not show when he made the purchase, or acquired the possession, and the fair conclusion is, that he obtained the possession pending the litigation. He must, therefore, surrender it when he shall have been paid the amount which the value of the improvements exceeds the rents and profits, with the damages, on the account which will be taken, or it shall appear that the result of such account must be against him.

It seems to the court that the heirs of Walden are not entitled to obtain, by this proceeding against Blair, the possession of the parcel of land in his possession, which is designated in the report of the surveyor by the figures 15, 14, 5, 6, 11, 15, and as containing fifteen acres, one rood, and seven poles. It was purchased, and the possession obtained, from one of the original complainants in the original bill, but there was no suit pending for it or against it, and its possession cannot be affected by any subsequent litigation between parties out of its possession. Tilton and Huston purchased it in the year 1813 of Robert Pogue, then in the possession, with his title under the junior patent for upwards of seven years, and thereupon they took the possession; since which time it has been held in continued possession by them and their vendee, and his vendee, down to Blair, the defendant, now residing upon it; each and all holding adverse to Walden. And,

It seems to the court that this length of adverse possession, upwards of seven years before the original bill, of which this proceeding is the sequel, was filed, and upwards of twenty years before Blair, or any other person in possession, became in anywise a party to the suit, or to any proceedings in respect to it, does constitute a bar under the statute of limitations, and that this part of the case is within the exceptions in the mandate, and the bill and proceedings of the Waldens, in respect to this part of the land, is dismissed; and this disposes of all the land for which judgments were recovered in the ejectment suits.

The Waldens have not, however, limited their claim in this proceeding to the boundaries of the four hundred acres of land, which have been given as the limits of the lands recovered in the actions of ejectment, but have insisted that these judgments were for all the land within the patent of their ancestors, for 1,333 acres; and that, whether this position be sustained or not, they are entitled, on the decree and mandate of the supreme court, to have themselves put in possession of all the land within, and common to, the patent and entry of their ancestor, as established by the decree of this court, to which it is not shown some other person has the superior title; and they prayed on the hearing for process by which to have such possession delivered to them. Their prayer is overruled, and this proceeding dismissed as to Blair, and all the other parties, in respect to all the lands without the boundary of the land covered by the judgments in ejectment, designated on the plat as first herein stated.

It is, however, provided, that neither these orders, nor what may be done in consequence of them, shall prejudice the rights of any of the parties, or their representatives, in the above mentioned actions of ejectment, or in the suit in chancery, of which this proceeding is a continuation, who are not now properly before the court. It is ordered that an account be taken of the improvements, and of the rents and profits and damages of each of the three above described parcels of land, of which, according to the above opinion, the Waldens are to have the possession. John C. Herndon is appointed the master for this purpose.

The following is the answer of John N. Proctor, to wit:

Answer of John N. Proctor.

The answer of John N. Proctor, to a bill of revivor filed in the circuit court of the United States for the district of Kentucky, by the heirs of Ambrose Walden, deceased.

This respondent, saving and reserving, &c., for answer to said bill states, that he was no party to the proceedings in chancery, or the common law records and judgments enjoined thereby, and has never been otherwise connected with said proceedings, or any of them, except so far as appears of record; that he is an innocent purchaser of the land in contest for a full and valuable consideration, and he has in good faith made lasting and valuable improvements thereon, believing the land to be his own. He states that his title is truly set forth in his petition to

have the order extending the demise set aside; which petition, and the proceedings thereon, are referred to, and made part of this answer. He makes the statements of said petition a part of this answer.

This respondent denies that the land claimed by him was ever held by the tenants or tenant of Ambrose Walden, or that those against whom judgments in ejectment were recovered were general tenants of said Walden, or held, or claimed to hold, all the land covered by the patent of said Walden; on the contrary, he alleges and charges that the tenants in possession, against whom judgment was rendered, held, each of them, by separate and distinct metes and bounds. He further states that he, and those under whom he claims, have had more than 20 years peaceable and uninterrupted adverse possession of the land in contest, before the filing of the bill of revivor. This respondent also states, that twenty years elapsed after the expiration of the demise in the ejectment suits, and before the extension of the same; during all which time, those under whom this respondent claims held adverse possession of said land. He relies also upon the seven years limitation law, having actually resided on the land for more than that time, and having a title deducible of record from the commonwealth, the great lapse of time, and the grossly negligent manner in which these various suits have been prosecuted. Having fully answered, he prays to be hence dismissed, with his reasonable costs, &c.

JOHN N. PROCTOR.

The following is the petition referred to in the foregoing answer, to wit:

Petition of John N. Proctor.

To the honorable the judges of the United States court for the seventh circuit and Kentucky district:

Your petitioner, John N. Proctor, humbly represents, that, in the year 1797, a certain Ambrose Walden, on the demise of Den, instituted an action of ejectment in the district court of this district against Fen, as casual ejector; and during the following year Lewis Craig and Jonathan Rose were admitted to defend said suit, and, at the June term 1800, a judgment was rendered in favor of said Walden for the land then in possession of said Rose, the tenant in possession, but no writ of possession has ever been executed on said judgment to this day. That the demise in said declaration was laid at ten years from the 15th day of August, 1789, and of course expired the 15th day of August, 1799, and remained dead and inoperative for about twenty-five years, by which lapse of time your petitioner is advised the possession ripened into a complete legal estate.

But at the May term, 1824, of your honorable court, on the motion of said Walden, the demise aforesaid was amended by inserting a new one of fifty years instead of ten, which had been inserted in the original declaration without the knowledge of, or notice to, either Craig or Rose, as your petitioner is informed and believes, or any other person interested in said land, and said *ex parte* order was not *was not* discover-

ed until after the term was over. Your petitioner is advised that said order was surreptitiously obtained and improvidently made for errors in fact, even waiving the impropriety of bringing into life a judgment in ejectment perfectly dead for upwards of twenty years, and that for the following facts and reasons, viz:

After the expiration of the demise in said Walden's declarations, viz., in the latter part of the year 1800, as your petitioner is advised, Rose, the tenant in possession, purchased the land claimed by said Walden from Bodley and Pogue, who claimed under a patent in the name of Tibbs & Co., for 10,000 acres of land, posterior in date to that of said Walden, and adverse thereto, for which he held the bond of said Bodley & Pogue for 131 acres, which bond was satisfied by the execution of a deed September, 1821.

2. Between the years 1814 and 1819, and while the said demise continued dead, your petitioner believes about the year 1816 or 1817, said Rose sold by executor's contract the said tract of land to his son, Jonathan H. Rose, and delivered the possession thereof to him; and the said Jonathan H. Rose continued on said land, and was in fact the terre-tenant at the date of the extension of the demise, viz., the 8th of May, 1824; and the said Jonathan H. had no notice or knowledge whatever of said extension, but the whole proceeding as to him was *ex parte*. And your petitioner states that, during the year 1826, he purchased by bond of said Jonathan H. Rose, and took possession of said land in March, 1827; and shortly afterwards received a deed therefor from said Rose, without any knowledge on his part of the extension of said demise, and when, as he is advised, the title of said Rose had ripened into a complete estate.

The said Lewis Craig was not a terre-tenant, but was entered defendant with Rose on account of his sale to said Rose of the land in contest.

Your petitioner is advised that under this state of facts his redress is by motion to reverse and annul said order renewing the demise; and he prays for such relief and for such other relief as his case requires; and as in duty bound, &c. JOHN N. PROCTOR.

The said Proctor saith, that manifest error hath intervened in the record and proceedings to his prejudice, in this, viz:

1st. The land in question had been possessed adversely for upwards of twenty years, after the first demise had expired, and previous to the order enlarging it, and no extension or renewal of the same ought to have taken place.

2d. No renewal of the demise ought to have taken place without notice to Lewis Craig and Rose, the one the landlord and the other the terre-tenant, when the suit was brought.

3d. It was irregular to renew the demise after it had expired without notice to Jonathan H. Rose, the terre-tenant.

4th. The whole proceeding was irregular, collusive, and void, and ought not to have been granted.

A true copy—attest: MOREHEAD & BROWN.
JOHN H. HANNA, *C. C. C. K. D.*

Add at a subsequent day of the May term aforesaid of said court, to wit, on the 9th day of June, 1847, on the bill of revivor, &c., of Walden's heirs, and proceedings directed by mandate of Supreme Court:

Order granting appeal.

The heirs of Ambrose Walden, by their counsel, prayed an appeal to the Supreme Court of the United States from the decrees and orders entered into in this cause on yesterday, and the counsel of John N. Proctor having admitted that the land which was in his possession in respect to which the proceeding was dismissed, is worth upwards of two thousand dollars; and Thomas Blair, by his counsel, and Walden's heirs, by their counsel, having admitted that the land in his, Blair's possession, is not worth one thousand dollars, the appeal is granted upon their executing bond in the clerk's office of this court within ten days from this time, in the penalty of one thousand dollars, with Edward M. Blackburn, their surety, conditioned according to law.

And at a subsequent day of the May term aforesaid of said court, to wit, on the 5th day of July, 1847, on the bill of revivor, &c., of Walden's heirs, and proceedings directed by the supreme court:

Amended decree.

The entry of the hearing of this cause, made here on the 8th day of June of the present term, is amended by minutes by inserting after the words "the heirs of Walden read their bill of revivor, filed November term, 1841," the following words, "and also the bill which is endorsed by the clerk, filed December 3d, 1842," which were by clerical misprison omitted.

The following are copies of the depositions read by Bodley's heirs, to wit:

Deposition of A. Owens.

The deposition of Athelston Owens, taken at the clerk's office, in the town of Washington, and county of Mason, and State of Kentucky, to be read in a suit now depending in the circuit court of the United States, for the district of Kentucky, wherein A. Walden's heirs are complainants, and Bodley's heirs and Pogue's heirs and others are defendants. The deponent being aged fifty years, and duly sworn, deposes and says:

Question by defendants. State whether or not the land claimed and possessed by each of the defendants, is or is not within the boundary of the patent of 10,000 acres, which issued to Tibbs & Co.; and if any part be, and part be not, within the boundary of that patent, state which of the defendants are, and which are not, within that patent; and state also, if you know, what part of the land in contest is, and what part is not, within the boundary recovered by Walden in the ejectment referred to in the pleadings in this cause, and which of the defendants claim and are possessed of the land in contest outside of the land recovered in said ejectment. State who are the children and heirs of John Cash, deceased; who the children and heirs of Thomas Cash, deceas-

ed; who the children and heirs of Dale Carter, deceased; and whether the wife of the defendant Tibbs is not a child and heiress of the said Dale Carter, deceased.

Answer by the deponent. All the land held by the defendants, James Tibbs, Philip Palmer, William Jones, and Thomas Blair, involved in this controversy, lies within the survey of 10,000 acres, granted to Robert Rutherford, assignee of Henry Chatcher and to Willoughby Tibbs, heirs at law of John Tibbs, deceased, by survey bearing on the 14th day of March, 1784, as will more fully appear by reference to the connected plat herewith returned, and the report thereof marked "plat No. 4," which this deponent refers to and makes part of his deposition, as to what land within the controversy the other defendants herein claim title to. This deponent is unadvised as to its boundary, and cannot therefore state whether it lies within the 10,000 acres survey or not. The said plat correctly represents the relative positions of the claims as reported. The line (i 5) is what is commonly called in its neighborhood Craig's line of 1333 acres; lying on the southwest side of said line is that for which the recovery was had at law. The fig. p. q. r. s. p. on the plat shows all the lands held by these defendants, or any of them, (and which is held by the defendant Blair,) lying within the land recovered in ejectment. Of the heirs of John Cash and Thomas Cash this deponent knows nothing; he has been informed, and it is a matter of common report, that the wife of James Tibbs is the daughter and only child of Dale Carter, deceased, late of this county.

Question by complainants by interrogatory. Do you know Lewis Craig first settled Jonathan Rose and others, under Walden's claim; and were they not settled under Craig as early as 1793; and [were] not the tenants settled by Craig afterwards purchased of Bodley Hughes, &c.? State all you know or have heard the tenants say on the subject. Do not the defendants, Benjamin Humstead, Thomas Blair, William Jones, and Philip Palmer, all hold and occupy land deeded to Waldron in the suit Bodley, Pogue, &c., against Waldron? State all you know or have heard the tenants state on the subject.

Answer by deponent. Several years ago I knew an old man by the name of Lewis Craig, whether the same mentioned in the interrogatory or not I do not know, nor do I know when the tenants on the land were settled by him. I have been informed, and deeds in writing show, that John Cash and Thos. Cash took conveyances from Bodley, Hughes & Pogue in the way my report referred to shews; as to what the tenants or defendants have stated on the subject, I have no special recollection, even if it were evidence; and further the deponent says nothing.

ATHELSTON OWENS.

Deposition of L. Dobbyns.

Also the deposition of Leroy Dobbyns, taken at the same time and place, and for the same purpose as that of Athelston Owens. The de-

ponent being *aged* about fifty-eight years of age, and first duly sworn, deposeth and says:

Question by defendants. State all you, and each of you, know in regard to the matter in contest in the case. State how long the land in contest, or any part thereof, has been possessed by the defendants, and each of them, and the person or persons under whom they respectively claim, and under what title the defendants respectively claim, and all you know in regard to their claim, and the contracts under which they claim; and if any of them claim under the heirs of any person or persons, state whether the persons under whom they claim as heirs are, in fact, the heirs of the person or persons to whom they profess to be heirs; and state the manner such person or persons professing to be heirs are heirs; whether they are the children of such person, or in what manner related to such person.

Answer. That portion of the land in the possession of the defendant, James Tibbs, has been in his possession for near now fifteen years, and was in that of Dale Carter, the father of Mrs. Tibbs, wife of said James, who was, at the time of said Carter's death, his only heir at law for near fifteen years before his death, except fifty-one acres and a half purchased by said Tibbs of Robert Pogue in the spring of 1825, which said fifty-one and a half acres was in the possession of Pogue, under whom Tibbs claims the same as early as 1819. Tibbs claimed all of said land under Dale Carter, save the 57½ acres aforesaid, which he claimed as above under Pogue, and under whom Carter claimed I do not now recollect, if I ever knew. About the contracts under which Tibbs claims said land, I know nothing, save as to the fifty-one and a half acres for which Tibbs holds Pogue's bond, dated 8th of December, 1815, for 41½ acres, and which is now before me, and is executed by Robert Pogue to Dale Carter, signed by himself, and by Thos. Bodley, by said Pogue as his attorney, and which bond, and the signatures thereto, I believe to be in the handwriting of said Robert Pogue, having frequently seen him write, and across which the deponent has written his name as the means of identifying the same, and which is made part of this his deposition. I believe that Elizabeth Tibbs, wife of said James Tibbs, is the sole heir at law of Dale Carter, deceased. The land claimed by William Evans has been in his possession since the fall of 1831, and I understood that he purchased of, and claimed the same under James Tibbs, who procured the possession thereof from the heirs of John Cash, to wit, Elizabeth Cash, widow of said John, Archibald Cash, Catharine Thornton, wife of Richard Thornton, Thos. Cash, William Cash, and John Cash, whom I believe to be the only children and heirs at law of said John Cash, the said John Cash having been in possession of said land to my knowledge for quite twelve years before his death, he having departed this life in or about the year 1822. I do not know under what title Cash claimed said land. Thomas Blair, one of the defendants, has been in possession of the land claimed by him since the spring of 1832. He claims under Benj. Fitzgerald, who claimed under Jilson Hambrick, who claimed under Richard Tilton

and John Huston, and the two latter under Robert Pogue. Hambrick had the possession of the same from eight to ten years; how long it was in the possession of the others this deponent cannot say. John Proctor, one of the defendants, has been in the possession of the land claimed by him about sixteen years at least. Proctor claimed under Jonathan Rose; how long the latter had been in possession cannot say.

Philip Palmer has been in possession of the land claimed by him since the year 1831, and he claims the same under Thomas, George, and John Cash, the reputed heir of Thomas Cash; how long it had been in possession of Thomas Cash or his heirs I cannot certainly say, but his heirs had the same for near thirty years.

Deponent further states, in answer to the 2d interrogatory propounded [to] him as the same is propounded [to] Athelston Owens, that he knows nothing as to what patent bound said several tracts spoken of by him as claimed by the defendants in he has already stated who are the children and heirs at law of John Cash, deceased, and of Thomas Cash, deceased, and also of Dale Carter.

3d. State as near as you can how long the land, now in contest, and possessed by the respective defendants, have been possessed by each of them, and others under whom they claim, and how long there has been a continued possession of each parcel by the respective defendants and others under whom they claim, and all you, and each of you, know in regard to the possession and title of each of the defendants, and the continuance of that possession by them respectively, and all others through whom they claim. State the whole truth, and all you know in regard to the matters and things in contest.

Answer. I have stated all I know in relation to the matters in said interrogatory contained in answer to the first.

4th. State all you know in regard to the improvements on the land claimed by each and all of the defendants; the value of each improvement; and by whom made; and when made.

I cannot answer as to the time when many of the improvements were made, nor by whom, nor as to their value, except as hereinafter stated. James Tibbs [and] Dale Carter cleared some forty odd acres, worth perhaps from twelve to fifteen dollars, meaning thereby to take it from a state of nature, and to fence and put it in its present condition. On the land claimed by Jones there is some 60 acres cleared, but by whom I cannot say, worth perhaps as much per acre as that of Tibbs & Carter. As to the nature, extent, and character on Palmer's land, I cannot say certainly. As to the amount of Blair's, I cannot say. There is a water grist mill and hewed log house thereon; there were buildings upon each of the tenements claimed by the defendants, except the part of Tibbs, but in what they all consist, or their present value, I cannot speak certainly.

5. State who are the heirs of Drake; also who are the heirs of Robert Pogue, now living; if any are dead, when they died; who are the heirs of any who have died.

Answer. John D. Taylor, Robert Taylor, and Eliza Sandridge are

reputed grand-children of Abraham Drake, deceased, and the only ones now alive. The heirs of Robert Pogue are Wm. S. Pogue, Edwin Pogue, and Andrew William Mackey; the second one of whom is recently dead, leaving as his heirs at law Eli M. Pogue, Elizabeth Jane Pogue, Robert Pogue, Franklin Pogue, Amanda Pogue, *Maria Pogue*, and his wife Maria Pogue, Samuel Garrison, and Gideon B. Garrison, children of Ann Eliza Garrison, daughter of Robert Pogue, deceased, and a child of John Pogue, but the name I do not know.

Question by complainants. 1. Do you know Lewis Craig first settled Jonathan Rose and others under Walden's claim, and were they not settled under Craig as early as 1793; and not the tenants, settled by Craig afterwards, purchased of Bodley, Hughes, &c.? State all you know or have heard the tenants say on the subject. Do not the defendants, Benjamin Umstead, Thos. Blair, Wm. Jones, and Philip Palmer, hold and occupy land deeded to Walden in the suit of Pogue and Bodley, &c., against Walden? State all you know or have heard the tenants state on this subject.

Answer. I do not know as to Lewis Craig having settled Jonathan Rose or others under Walden's claim. As to the settlement under Craig, or the purchase of his tenants of Bodley and Hughes, I know nothing, except as hereinafter stated. I have heard Umstead say he purchased of John Johnston. As to the fact whether Blair, Umstead, Jones, and Palmer occupy land deeded to Walden in the suit of Pogue and Bodley against Walden, I cannot say. I have heard the tenants state many things touching their claims, and the manner of holding, and under whom, but what those statements are I cannot now recollect; and further saith not.

LEROY DOBYNS.

Deposition of E. Lynn.

Also the deposition of Ebenezer Lynn, taken at the same time and place, and for the same purpose, as that of Leroy Dobyns.

Deponent being of lawful age, and first duly sworn, in answer to the 1st interrogatory as put to Dobyns by defendant, says: The land in the possession of Tibbs I know was in the possession of Dale Carter (except the 51½ acres spoken of by Leroy Dobyns) from the year 1801 or 1802, until his death, in the spring of 1828. Jas. Tibbs, who married his daughter, and only child alive at the time of his death, has been in possession ever since until very recently. Dale Carter claimed of and bought of General Robert Pogue; the 51½ acres was purchased, as I have understood, of Robert Pogue, in the year 1825, by James Tibbs, and had been in possession of said Pogue from the year 1808, or about that time. I do not know certainly under whom Pogue claimed, but I always understood that he claimed under Tibbs & Co. The land claimed by Jones was first in the possession of Isaac Shockey, as early as 1803 or 1804, and he remained in possession of the same for near four or five years, claiming under Robert Pogue; then John and Thomas Cash took possession of said land, claiming under Robert Pogue, and

they and their heirs remained in possession until 1831, and was succeeded by Wm. Jones, the present defendant, who remained in possession until about the year 1835. As to the land claimed by Tho. Blair, in the spring of 1798, a man by the name of Abraham Shocky lived upon said land, but under whom he held this deponent does not know. Robert Pogue succeeded him in the possession of said land about the year 1806 or 1807, and he and those claiming under him has been in possession of [it] ever since. The presentt enant, Blair, having been in possession of the same since the year 1832, to the best of my knowledge, Pogue claiming under Tibbs & Co. As to the land of Philip Palmer, it was in the same condition as that [of] William Jones, it being part of the land belonging and possessed by John and Thomas Cash; it being that portion which Palmer purchased, as this deponent has understood, of the heirs of Thomas Cash. As to the land claimed by John N. Proctor, it was occupied by Jonathan Rose, in 1798. I have understood he settled there under Craig, and remained in possession of the same until Proctor purchased of him.

In answer to the 2d interrogatory, put by defendants to Dobyns, deponent says: That, as in what boundaries the land respectively claimed by these defendants lies, he knows nothing. Leroy Dobyns has truly stated, as far as this deponent knows, who are the children and heirs at law of Tho. Cash, John Cash, and Dale Carter, deceased.

The deponent, for answer to the 3d interrogatory, replies, that he has already answered the same as fully as he can in his answer to the first one put him herein.

Deponent states, in answer to 4th question, that he cannot speak with certainty as to the nature, extent, and character of the improvements made by the defendants, or any of them.

Deponent, in answer to the first and only interrogatory put by complainants to Leroy Dobyns, answers and says: That he knows nothing, of his own knowledge, as to whom Rose settled under; he has understood that he settled under Lewis Craig; as to whom other tenants settled under, he knows nothing; whether any tenants purchased of Bodley, Hughes, &c., he knows nothing, save that he has heard Jonathan Rose purchased of Bodley; and also whether Umstead, Blair, Jones, and Palmer hold and occupy land deeded to Walden in the suit of Pogue and Bodley, &c., against Walden, he knows nothing. I have conversed with some of the tenants, but I cannot now state what they said; and further saith not

EBENEZER LYNN.

Deposition of Jos. Duncan.

Also the deposition of Joseph Duncan, taken at the same time and place as that of Ebenezer Lynn, and for the same purpose.

This deponent, aged about forty-nine years, and first duly sworn, in answer to first interrogatory put by defendants to Dobyns, answers and says, he cannot state anything more than stated by Ebenezer Lynn, and he adopts that as his answer to the said interrogatory.

In answer to the second interrogatory by defendants, says that he believes that the land claimed by and in possession of the defendants are within Tibbs & Co. 10,000 acre patent, having been at the stone corner spoken of by surveyor Owens; and this deponent, as he understands the extent of the recovery in the ejectment by Walden, states that none of the land occupied by the defendants, Tibbs, Jones, and Palmer, is within the recovery in ejectment, and only part of Blair; he concurs with the other witnesses as to who are the heirs of Drake, John and Thomas Cash, and Dale Carter.

In answer to the 3d interrogatory witness states that he cannot answer save as it is answered in that of Ebenezer Lynn, and he refers to and adopts the same as an answer to said 3d interrogatory.

Deponent answers to the 4th interrogatory, that he knows *that he knows* that Tibbs has cleared, to his knowledge, some ten acres, worth 12 or 15 dollars per acre for clearing, &c. The improvements on Jones' land consists of about 60 acres, a good hewed log house, stable, and corn crib, kitchen and smoke-house, some portion of which was cleared by Isaac Shocky; the remainder by the two Cashes; the clearing of which is worth as much as that of Tibbs' land.

In answer to the interrogatory of the complainant, deponent says, Rose first settled there, but under whom he settled he does not know, if he ever heard; if he did, he has forgotten; he cannot answer the remainder of the said question, nor can he now state what he has heard the tenants say; and further saith not

JOSEPH DUNCAN.

KENTUCKY, *sct:*

I certify that the foregoing depositions of Athelston Owens, Leroy Dobyns, Ebenezer Lynn, and Joseph Duncan, were taken, subscribed, and sworn before me, at the clerk's office, in Washington, on this day. Given under my hand, this 12th day of October, 1842.

MARSHALL KEY.

Deposition of Henry Bruce, sen.

The deposition of Henry Bruce, sen., and others, taken at the residence of Thomas Blair, in the county [of] Mason, to be read as evidence in a suit now pending in the circuit court for the United States, to be holden in Frankfort, Ky., wherein Ambrose Walden's heirs are plaintiffs, and Thomas Blair and others are defendants. Depositions taken pursuant to the annexed notice. The deponent being of lawful age, and first duly sworn, deposeth that:

Question by Blair. State according to the best of your recollection when Robert Pogue took possession of the mill and premises now in my possession.

Answer. Upon an examination of my books I find an entry of the purchase of a desk and two tables of Abraham Shockey, who then lived at the mill now owned by Thomas Blair; the entry in the book is made upon the 4th February, 1803; my impression is that Shockey had then,

(at the date of the above entry,) sold the mill and premises to Robert Pogue, and he, Shocky, was then preparing to remove; and from the above circumstance my impression is that Robert Pogue obtained possession of the mill and premises some time during the year 1803. In the foregoing part of the deposition, I have stated that Shocky sold to Pogue, I may use the word sold improperly, for I cannot say, nor do I mean to be understood that Pogue *purchased* of Shockey, but I merely mean to say that Pogue *succeeded* Shockey in the possession of the mill, &c.; and further saith not

HENRY BRUCE.

Deposition of Elizabeth Patton.

Also the deposition of Elizabeth Patton, taken at the same time and place, and for the same purpose. Deponent first duly sworn, deposeth that, &c.:

Question. State at what time Robert Pogue obtained possession of the mill and premises now in my possession.

Answer. I was married in 1804, in the State of Pennsylvania, and when I returned to Kentucky, one James Patton was then (in the year 1804) attending to the mill for Robert Pogue, as his tenant, according to the best of my recollection; I cannot state when Pogue obtained possession; and further deponent saith not.

ELIZABETH PATTON.

Deposition of Wm. P. Stout.

Also the deposition of William P. Stout, taken at the same time and place, and for the same purpose, as the foregoing deposition of Eli Metcalfe. The deponent of lawful age, and first duly sworn, deposeth and saith, that he *new* the farm on which Benjamin Umstead now lives, and that John Bell resided on same previous to the year 1808; and I believe Bell sold the premises to John Johnson, and Johnson sold Umstead, and Umstead settled upon the land in the year 1811, and remains in possession ever since; and further this deponent saith not.

WM. P. STOUT.

Deposition of Robert Ewing.

The deposition of Robert Ewing, taken at the same time and place, and for the same purpose. The deponent being of lawful age, and being first sworn, deposeth and saith: Say, if you can, at what time did Robert Pogue have possession of the premises on which Thomas Blair now lives. I lived with James Patton in the year 180 , who then lived upon the premises; who was tenant under Robert Pogue, and understood from said Patton, he, Patton, had lived on the premises the year previous; the deponent further states that John Bell, in the year 1805, lived upon the premises upon which Benjamin Umstead now lives, and that Bell sold to Johnson as I understand; and further this deponent saith not.

ROBERT EWING.

MASON COUNTY, *State of Kentucky, sct:*

The foregoing depositions was this day taken, subscribed, and sworn to before the undersigned, a justice of the peace for said county, at the time and place, and for the purpose stated in the caption thereof. Given under my hand, this 11th October, 1845.

LEROY DOBYNS, *J. P.*

Notice to take depositions.

Edward Blackburn, esq., agent for the heirs of Ambrose Walden, will please to take notice, that we shall, on the 11th day of October next, at the hours of 9 o'clock, A. M., and 5 o'clock, P. M., at the house of Thomas Blair, in the county [of] Mason, State of Kentucky, proceed to take the depositions of Robert Ewing and others, to be read as evidence in a suit now depending in the circuit court of the United States, to be holden at Frankfort, Kentucky, wherein Ambrose Walden's heirs are plaintiffs, and we are defendants, where you may attend if you choose.

22d Sept., 1845. THO. BLAIR & OTHERS.

Endorsed: I acknowledge the service of the within notice, this 28th day of September, 1845. E. M. BLACKBURN.

Deposition of D. L. Runyon.

The deposition of David L. Runyon, taken at the house of John N. Proctor, in the county of Fleming, and State of Kentucky, on Friday the 29th day of April, 1836, pursuant to notice to be read as evidence in a suit now depending in the federal court, 7th circuit, Kentucky district, wherein John N. Proctor is complainant, and Ambrose Walden defendant. This deponent being of lawful age, and first duly sworn, deposeth and saith, that he was living on the land of Jonathan Rose at the time he sold the said land to Jonathan H. Rose, which was previous to the 1st day of March, 1814; and this deponent further saith, that Jonathan H. Rose remained in possession of the land until about the year 1826, at which time he sold the said land to John N. Proctor, who has since had the land in possession, and is now living on the same; and further this deponent saith not.

DAVID L. RUNYON.

STATE OF KENTUCKY, *Fleming county, sct:*

I, William W. Blair, one of the commonwealth justices of the peace in and for said county, do certify, that the foregoing deposition of David L. Runyon was taken, subscribed, and sworn to before me, at the time and place, and for the purpose mentioned in the caption. Given under my hand this 29th day of April, 1836.

WM. W. BLAIR, *J. P. F. C.*

Deposition of Jas. Tibbs.

The deposition of James Tibbs, taken at the house of John N. Proctor in the county of Fleming, and State of Kentucky, on Saturday the

(at the date of the above entry,) sold the mill and premises to Robert Pogue, and he, Shocky, was then preparing to remove; and from the above circumstance my impression is that Robert Pogue obtained possession of the mill and premises some time during the year 1803. In the foregoing part of the deposition, I have stated that Shocky sold to Pogue, I may use the word sold improperly, for I cannot say, nor do I mean to be understood that Pogue *purchased* of Shockey, but I merely mean to say that Pogue *succeeded* Shockey in the possession of the mill, &c.; and further saith not

HENRY BRUCE.

Deposition of Elizabeth Patton.

Also the deposition of Elizabeth Patton, taken at the same time and place, and for the same purpose. Deponent first duly sworn, deposeth that, &c.:

Question. State at what time Robert Pogue obtained possession of the mill and premises now in my possession.

Answer. I was married in 1804, in the State of Pennsylvania, and when I returned to Kentucky, one James Patton was then (in the year 1804) attending to the mill for Robert Pogue, as his tenant, according to the best of my recollection; I cannot state when Pogue obtained possession; and further deponent saith not.

ELIZABETH PATTON.

Deposition of Wm. P. Stout.

Also the deposition of William P. Stout, taken at the same time and place, and for the same purpose, as the foregoing deposition of Eli Metcalfe. The deponent of lawful age, and first duly sworn, deposeth and saith, that he *new* the farm on which Benjamin Umstead now lives, and that John Bell resided on same previous to the year 1808; and I believe Bell sold the premises to John Johnson, and Johnson sold Umstead, and Umstead settled upon the land in the year 1811, and remains in possession ever since; and further this deponent saith not.

WM. P. STOUT.

Deposition of Robert Ewing.

The deposition of Robert Ewing, taken at the same time and place, and for the same purpose. The deponent being of lawful age, and being first sworn, deposeth and saith: Say, if you can, at what time did Robert Pogue have possession of the premises on which Thomas Blair now lives. I lived with James Patton in the year 180 , who then lived upon the premises; who was tenant under Robert Pogue, and understood from said Patton, he, Patton, had lived on the premises the year previous; the deponent further states that John Bell, in the year 1805, lived upon the premises upon which Benjamin Umstead now lives, and that Bell sold to Johnson as I understand; and further this deponent saith not.

ROBERT EWING.

MASON COUNTY, *State of Kentucky, sct:*

The foregoing depositions was this day taken, subscribed, and sworn to before the undersigned, a justice of the peace for said county, at the time and place, and for the purpose stated in the caption thereof. Given under my hand, this 11th October, 1845.

LEROY DOBYNS, *J. P.*

Notice to take depositions.

Edward Blackburn, esq., agent for the heirs of Ambrose Walden, will please to take notice, that we shall, on the 11th day of October next, at the hours of 9 o'clock, A. M., and 5 o'clock, P. M., at the house of Thomas Blair, in the county [of] Mason, State of Kentucky, proceed to take the depositions of Robert Ewing and others, to be read as evidence in a suit now depending in the circuit court of the United States, to be holden at Frankfort, Kentucky, wherein Ambrose Walden's heirs are plaintiffs, and we are defendants, where you may attend if you choose.

22d Sept., 1845. THO. BLAIR & OTHERS.

Endorsed: I acknowledge the service of the within notice, this 28th day of September, 1845. E. M. BLACKBURN.

Deposition of D. L. Runyon.

The deposition of David L. Runyon, taken at the house of John N. Proctor, in the county of Fleming, and State of Kentucky, on Friday the 29th day of April, 1836, pursuant to notice to be read as evidence in a suit now depending in the federal court, 7th circuit, Kentucky district, wherein John N. Proctor is complainant, and Ambrose Walden defendant. This deponent being of lawful age, and first duly sworn, deposeth and saith, that he was living on the land of Jonathan Rose at the time he sold the said land to Jonathan H. Rose, which was previous to the 1st day of March, 1814; and this deponent further saith, that Jonathan H. Rose remained in possession of the land until about the year 1826, at which time he sold the said land to John N. Proctor, who has since had the land in possession, and is now living on the same; and further this deponent saith not.

DAVID L. RUNYON.

STATE OF KENTUCKY, *Fleming county, sct:*

I, William W. Blair, one of the commonwealth justices of the peace in and for said county, do certify, that the foregoing deposition of David L. Runyon was taken, subscribed, and sworn to before me, at the time and place, and for the purpose mentioned in the caption. Given under my hand this 29th day of April, 1836.

WM. W. BLAIR, *J. P. F. C.*

Deposition of Jas. Tibbs.

The deposition of James Tibbs, taken at the house of John N. Proctor in the county of Fleming, and State of Kentucky, on Saturday the

30th day of April, 1836, pursuant to notice, to be read as evidence in a suit now pending in the Federal court, 7th circuit, Kentucky district, wherein John N. Proctor is complainant, and Ambrose Walden defendant. This deponent being of lawful age, and first duly sworn, deposeth and saith, that he is a neighbor to John N. Proctor; that he came into the neighborhood in 1815, and that he was acquainted with Jonathan H. Rose, and purchased wheat of him in the fall of 1816; that at that time he had possession and lived upon the farm on which John N. Proctor now lives, and that he understood, both from Jonathan H. Rose and his father, that Jonathan H. Rose had purchased and was the rightful owner of said farm, and that he remained in possession of the same until he sold to John N. Proctor, which was about the year 1826. And further this deponent saith not.

JAMES TIBBS.

Deposition of E. Johnson.

Also the deposition of Elijah Johnson, taken at the same time and place, and to be read as evidence in the same suit. This deponent, being of lawful age, and first duly sworn, deposeth and saith, that he is a neighbor to John N. Proctor, and was acquainted with Jonathan H. Rose, who formerly owned the farm on which said Proctor now lives. That he understood from Jonathan H. Rose and his father both, about the year 1816, that Jonathan H. Rose had purchased the farm; and he further states that said Jonathan H. Rose remained in possession, and exercised ownership over the same, until he sold to John N. Proctor, which was about the year 1826, and that said Proctor had remained in possession ever since. And further this deponent saith not.

ELIJAH JOHNSON.

FLEMING COUNTY, KENTUCKY, *sct:*

I, William W. Blair, one of the commonwealth's justices of the peace in and for said county, duly commissioned, sworn, and acting as such, do certify, that the foregoing of James Tibbs and Elijah were taken, subscribed, and sworn to before me, at the time and place, and for the purpose mentioned in the caption. I further certify, that I am not of counsel or attorney, or in any wise related to either of the parties, and that I am not interested either directly or indirectly in the event of the cause. Given under my hand, this 30th day of April, 1836.

WM. W. BLAIR, *J. P. F. C.*

Notice to take depositions.

Mr. Edward Blackburn, or Robert Wickliffe, attorney for Ambrose Walden, will take notice that we will attend at the house of John N. Proctor, in the county of Fleming, and State of Kentucky, on Friday the 29th instant, between the hours of 8 o'clock, A. M., and 5 o'clock, P. M , and continue from day to day until the business is completed, to take the deposition of David L. Runyon and others, to be read as evidence in a suit now pending in the Federal court, 7th circuit, Ken-

tucky district, wherein we are complainants, and Ambrose Walden defendant; at which time and place you may attend if you please. April 23d, 1836.

JOHN N. PROCTOR,
THOS. BLAIR.

FLEMING COUNTY *sct:*

I, Wm. W. Blair, one of the commonwealth's justices of the peace in and for said county, do certify, that James P. Patton this day appeared before me, and made oath that he served the within notice on Edward Blackburn, on Tuesday, the 26th day of April, 1836.

Given under my hand this 29th day of April, 1836.

WM. W. BLAIR, *J. P. F. C.*

The following are depositions read by Walden's heirs, to wit:

District court of the United States, for the Kentucky district, holden in Frankfort, wherein Ambrose Walden's heirs are complainants, and John Kincaid and others are defendants.

Deposition of Jos. Duncan.

The deposition of Joseph Duncan, taken at the house of Edward H. Herndon in the county of Mason, and State of Kentucky, on the 22d day of September, 1845, agreeable to the notice hereto annexed, to be read as evidence on the part of the complainants, in a suit in chancery now depending in the circuit [court] of the United States.

The deponent being of lawful age, and first duly sworn, deposeth and sayeth:

Question by complainants. State all you know respecting the claim of Ambrose Walden, on the waters of Flat fork, in the county of Mason, now in the possession of John Kincaid and others, and how long you have lived in the neighborhood.

Answer. I have lived in the neighborhood for fifty years. This deponent says that Jonathan Rose was in possession of the land now in possession of John Kincaid, say in the year 1806, and my impression is he, Rose, held under Craig, and he sold to his son Jonathan Rose about the year 1808, and said Rose sold to John Proctor about the year 1824 or '5, and he, Proctor, sold to John Kincaid, the present occupant, about the year 1838, and as I understood this was the locator's part.

Question by same. State if you please if Benj. Umstead does not live on the same land of Walden, and how long he has lived there.

Answer. He lives on the same land claimed by Walden, and has lived there upwards of thirty years, and holds under John Johnson, and he, Johnson, under John Bell.

Question by same. Does not Thomas Blair live on the same survey claimed by Walden.

Answer. Blair does live on the same claim, and has lived on the land 15 or 18 years, and held under Benj. Fitzgerald, who purchased of Jilson Hambrick, and Jilson Hambrick under Tilton & Huston, and Tilton & Huston held under Robert Pogue.

30th day of April, 1836, pursuant to notice, to be read as evidence in a suit now pending in the Federal court, 7th circuit, Kentucky district, wherein John N. Proctor is complainant, and Ambrose Walden defendant. This deponent being of lawful age, and first duly sworn, deposeth and saith, that he is a neighbor to John N. Proctor; that he came into the neighborhood in 1815, and that he was acquainted with Jonathan H. Rose, and purchased wheat of him in the fall of 1816; that at that time he had possession and lived upon the farm on which John N. Proctor now lives, and that he understood, both from Jonathan H. Rose and his father, that Jonathan H. Rose had purchased and was the rightful owner of said farm, and that he remained in possession of the same until he sold to John N. Proctor, which was about the year 1826. And further this deponent saith not.

JAMES TIBBS.

Deposition of E. Johnson.

Also the deposition of Elijah Johnson, taken at the same time and place, and to be read as evidence in the same suit. This deponent, being of lawful age, and first duly sworn, deposeth and saith, that he is a neighbor to John N. Proctor, and was acquainted with Jonathan H. Rose, who formerly owned the farm on which said Proctor now lives. That he understood from Jonathan H. Rose and his father both, about the year 1816, that Jonathan H. Rose had purchased the farm; and he further states that said Jonathan H. Rose remained in possession, and exercised ownership over the same, until he sold to John N. Proctor, which was about the year 1826, and that said Proctor had remained in possession ever since. And further this deponent saith not.

ELIJAH JOHNSON.

FLEMING COUNTY, KENTUCKY, *sct:*

I, William W. Blair, one of the commonwealth's justices of the peace in and for said county, duly commissioned, sworn, and acting as such, do certify, that the foregoing of James Tibbs and Elijah were taken, subscribed, and sworn to before me, at the time and place, and for the purpose mentioned in the caption. I further certify, that I am not of counsel or attorney, or in any wise related to either of the parties, and that I am not interested either directly or indirectly in the event of the cause. Given under my hand, this 30th day of April, 1836.

WM. W. BLAIR, *J. P. F. C.*

Notice to take depositions.

Mr. Edward Blackburn, or Robert Wickliffe, attorney for Ambrose Walden, will take notice that we will attend at the house of John N. Proctor, in the county of Fleming, and State of Kentucky, on Friday the 29th instant, between the hours of 8 o'clock, A. M., and 5 o'clock, P. M , and continue from day to day until the business is completed, to take the deposition of David L. Runyon and others, to be read as evidence in a suit now pending in the Federal court, 7th circuit, Ken-

tucky district, wherein we are complainants, and Ambrose Walden defendant; at which time and place you may attend if you please. April 23d, 1836.

JOHN N. PROCTOR,
THOS. BLAIR.

FLEMING COUNTY *sct:*

I, Wm. W. Blair, one of the commonwealth's justices of the peace in and for said county, do certify, that James P. Patton this day appeared before me, and made oath that he served the within notice on Edward Blackburn, on Tuesday, the 26th day of April, 1836.

Given under my hand this 29th day of April, 1836.

WM. W. BLAIR, *J. P. F. C.*

The following are depositions read by Walden's heirs, to wit:

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The deponent being of lawful age, and first duly sworn, deposeth and sayeth:

Question by complainants. State all you know respecting the claim of Ambrose Walden, on the waters of Flat fork, in the county of Mason, now in the possession of John Kincaid and others, and how long you have lived in the neighborhood.

Answer. I have lived in the neighborhood for fifty years. This deponent says that Jonathan Rose was in possession of the land now in possession of John Kincaid, say in the year 1806, and my impression is he, Rose, held under Craig, and he sold to his son Jonathan Rose about the year 1808, and said Rose sold to John Proctor about the year 1824 or '5, and he, Proctor, sold to John Kincaid, the present occupant, about the year 1838, and as I understood this was the locator's part.

Question by same. State if you please if Benj. Umstead does not live on the same land of Walden, and how long he has lived there.

Answer. He lives on the same land claimed by Walden, and has lived there upwards of thirty years, and holds under John Johnson, and he, Johnson, under John Bell.

Question by same. Does not Thomas Blair live on the same survey claimed by Walden.

Answer. Blair does live on the same claim, and has lived on the land 15 or 18 years, and held under Benj. Fitzgerald, who purchased of Jilson Hambrick, and Jilson Hambrick under Tilton & Huston, and Tilton & Huston held under Robert Pogue.

30th day of April, 1836, pursuant to notice, to be read as evidence in a suit now pending in the Federal court, 7th circuit, Kentucky district, wherein John N. Proctor is complainant, and Ambrose Walden defendant. This deponent being of lawful age, and first duly sworn, deposeth and saith, that he is a neighbor to John N. Proctor; that he came into the neighborhood in 1815, and that he was acquainted with Jonathan H. Rose, and purchased wheat of him in the fall of 1816; that at that time he had possession and lived upon the farm on which John N. Proctor now lives, and that he understood, both from Jonathan H. Rose and his father, that Jonathan H. Rose had purchased and was the rightful owner of said farm, and that he remained in possession of the same until he sold to John N. Proctor, which was about the year 1826. And further this deponent saith not.

JAMES TIBBS.

Deposition of E. Johnson.

Also the deposition of Elijah Johnson, taken at the same time and place, and to be read as evidence in the same suit. This deponent, being of lawful age, and first duly sworn, deposeth and saith, that he is a neighbor to John N. Proctor, and was acquainted with Jonathan H. Rose, who formerly owned the farm on which said Proctor now lives. That he understood from Jonathan H. Rose and his father both, about the year 1816, that Jonathan H. Rose had purchased the farm; and he further states that said Jonathan H. Rose remained in possession, and exercised ownership over the same, until he sold to John N. Proctor, which was about the year 1826, and that said Proctor had remained in possession ever since. And further this deponent saith not.

ELIJAH JOHNSON.

FLEMING COUNTY, KENTUCKY, *sct:*

I, William W. Blair, one of the commonwealth's justices of the peace in and for said county, duly commissioned, sworn, and acting as such, do certify, that the foregoing of James Tibbs and Elijah were taken, subscribed, and sworn to before me, at the time and place, and for the purpose mentioned in the caption. I further certify, that I am not of counsel or attorney, or in any wise related to either of the parties, and that I am not interested either directly or indirectly in the event of the cause. Given under my hand, this 30th day of April, 1836.

WM. W. BLAIR, *J. P. F. C.*

Notice to take depositions.

Mr. Edward Blackburn, or Robert Wickliffe, attorney for Ambrose Walden, will take notice that we will attend at the house of John N. Proctor, in the county of Fleming, and State of Kentucky, on Friday the 29th instant, between the hours of 8 o'clock, A. M., and 5 o'clock, P. M , and continue from day to day until the business is completed, to take the deposition of David L. Runyon and others, to be read as evidence in a suit now pending in the Federal court, 7th circuit, Ken-

tucky district, wherein we are complainants, and Ambrose Walden defendant; at which time and place you may attend if you please. April 23d, 1836.

JOHN N. PROCTOR,
THOS. BLAIR.

FLEMING COUNTY *sct:*

I, Wm. W. Blair, one of the commonwealth's justices of the peace in and for said county, do certify, that James P. Patton this day appeared before me, and made oath that he served the within notice on Edward Blackburn, on Tuesday, the 26th day of April, 1836.

Given under my hand this 29th day of April, 1836.

WM. W. BLAIR, *J. P. F. C.*

The following are depositions read by Walden's heirs, to wit:

District court of the United States, for the Kentucky district, holden in Frankfort, wherein Ambrose Walden's heirs are complainants, and John Kincaid and others are defendants.

Deposition of Jos. Duncan.

The deposition of Joseph Duncan, taken at the house of Edward H. Herndon in the county of Mason, and State of Kentucky, on the 22d day of September, 1845, agreeable to the notice hereto annexed, to be read as evidence on the part of the complainants, in a suit in chancery now depending in the circuit [court] of the United States.

The deponent being of lawful age, and first duly sworn, deposeth and sayeth:

Question by complainants. State all you know respecting the claim of Ambrose Walden, on the waters of Flat fork, in the county of Mason, now in the possession of John Kincaid and others, and how long you have lived in the neighborhood.

Answer. I have lived in the neighborhood for fifty years. This deponent says that Jonathan Rose was in possession of the land now in possession of John Kincaid, say in the year 1806, and my impression is he, Rose, held under Craig, and he sold to his son Jonathan Rose about the year 1808, and said Rose sold to John Proctor about the year 1824 or '5, and he, Proctor, sold to John Kincaid, the present occupant, about the year 1838, and as I understood this was the locator's part.

Question by same. State if you please if Benj. Umstead does not live on the same land of Walden, and how long he has lived there.

Answer. He lives on the same land claimed by Walden, and has lived there upwards of thirty years, and holds under John Johnson, and he, Johnson, under John Bell.

Question by same. Does not Thomas Blair live on the same survey claimed by Walden.

Answer. Blair does live on the same claim, and has lived on the land 15 or 18 years, and held under Benj. Fitzgerald, who purchased of Jilson Hambrick, and Jilson Hambrick under Tilton & Huston, and Tilton & Huston held under Robert Pogue.

Question by same. Please state who settled on the land now in possession of D. S. Bradley.

Answer. Isaac Shocky was on the land about the year eighteen [hundred] and six, and he sold to Thomas and John Cash, and John Cash's heirs sold to James Tibbs, and Tibbs sold to William Jones, and Jones sold to James Henry, and Henry's heirs sold to D. S. Bradley, who is the present occupant.

Question by same. Do you know of any new tenants living on the land claimed by Walden for the last forty years, except those named?

Answer. I know of none.

Question by same. Do you not know that Dale Carter purchased of Ambrose Walden part of this same tract, say one hundred or a 150 acres, upwards of forty years ago, and that he has held peaceable possession ever since?

Answer. From information, Carter purchased one hundred or 150 acres of land of Walden, and he and his heirs or assigns has held peaceable possession ever since, so far as I know or believe; and further this deponent saith not. JOSEPH DUNCAN.

Deposition of James Morris.

The deposition of James Morris taken at the same *place*, and at the same place, and for the same purpose.

The deponent being of lawful age, and first duly sworn, deposeth and saith, that he well recollects that Jonathan Rose first purchased his land of Lewis Craig, who claimed a locator's part in Walden's survey, and that Rose settled on the land as early as the year 1794 or 1795; and that said Rose sold the said land to his son, Jonathan Rose, subsequently; and that he, the last Rose, sold the same land to John N. Proctor, and said Proctor sold the same, as this deponent is informed, to John Kincaid, who now lives on the same. This deponent further states, that he recollects that Charles Proctor settled on a part of the place now held by Benjamin Umstead, in Walden's survey, he believes in or about the year 1795, and that Proctor sold the same to Charles Metcalfe, as this deponent is informed, and that said Metcalfe sold the same to John Johnson, who sold the same to Benjamin Umstead, who now lives on the same; and the other part of said Umstead's place was settled by William Allen, in the year 1794 or 1795, or earlier; and that said Allen sold the same to Drake, and Drake's heirs sold the same to said Umstead, who still has the occupancy and possession of the same. This deponent recollects that some time previous to the year 1800, as this deponent believes, that Abraham Shockey built one or two mills, he thinks a saw mill and grist mill, on the land claimed by Walden, and that Robert Pogue afterwards occupied the same, and sold the same to Tilton & Huston, who sold the same to Gilson Hamrick, who sold the same to Benjamin Fitzgerald, who sold *sold* the same to Thomas Blair, who now has the possession and occupancy of the same, and has lived on the same, as this deponent is informed, for the last 15 or 16 years; further this deponent sayeth not.

JAMES MORRIS.

Deposition of Thomas Walden.

The deposition of Thomas Walden, taken at the house of Thomas Walden & Son, in the county of Rappahannock, in the State of Virginia, on the 13th day of June, in the year of our Lord 1845, to be read as evidence in the suits in chancery depending in the circuit court of the United States for the district of Kentucky, the one Bodley and Rogers and others against Walden and others, and the other Waldens and others against Bodley and others, who being duly cautioned, examined, and sworn, to depose the whole truth, deposeth and saith:

Question 1st by Walden and others. Were you acquainted with Ambrose Walden, deceased, and when did he die, and who are his children and heirs at law? State their names, ages, and residences, and to whom the females are married, their names, and that of their husbands, and how long they have been married. State whatever you know in answer to this interrogatory.

Answer. I was acquainted with Ambrose Walden, deceased, from my earliest recollection to the time of his death, (he being my brother,) which occurred in the spring of the year 1840; his children are, Richard Walden, who, to the best of my knowledge, is aged about 57 or eight years, and resides in the county of Pittsylvania, State of Virginia; Judith Walden, who, to the best of my knowledge, is aged 56 or seven years, who married George Carter, and who, together with her husband, resides in the county of Fauquier, State of Virginia, and who has been married about 30 years; William Walden, aged 52 or three years, and resides in the county of Rappahannock, State of Virginia; John Walden, aged about 50 years, and resides in the county of Fauquier, State of Virginia; as to Judith Walden, who married George Carter, and as to John Walden, all of whom reside in the county of Fauquier, about 25 miles distant from this place, they were all living a few weeks since; William Walden I know to be living, for he is now present at the taking of this deposition; as to Richard Walden, who resides 150 or 100 miles distant from this place, he was living 3 months ago, and I have reason to believe he is still living, for in the event of his death information would have been received by his brother William, who resides immediately in this vicinity. The above named four children are all the heirs at law of my deceased brother, Ambrose Walden, and I believe they are living; and further this deponent saith not.

T. WALDEN.

STATE OF VIRGINIA, *Rappahannock county, to wit:*

I, Lyle Millan, a justice of the peace for the county and State aforesaid, do state, that at the time and place stated in the caption of the deposition, the within named Thomas Walden appeared, and being duly sworn and charged by me as is stated in the caption, did depose and give the foregoing deposition in my presence, and in my presence did sign the same. I also certify, that the whole of the deposition was written by me in the presence and by direction of the witness, and that I am neither agent, attorney, or counsel for either of the parties, nor

interested in the event of the cause; and I further state and certify, that the residence of the deponent and the place of taking the deposition is a greater distance from Frankfort, in Kentucky, than one hundred miles, and that the deposition was taken at the instance of the said Walden and others; that I caused no notice to be served on the adverse parties, because neither they nor any agent or attorney of theirs known to me reside within 100 miles of the place of taking the deposition; all of which is certified as the cause of taking the deposition.

Given under my hand, this 3d day of June, 1845.

LYLE MILLAN.

Deposition of E. Metcalfe.

The deposition of Eli Metcalfe, taken at the same time and place, and to be read in the same suit as the depositions of Joseph Duncan and James Morris. This deponent being of lawful age, and first sworn, deposeth and saith, that he well recollects that Jonathan Rose settled on the place now occupied by John Kincaid, in Walden's survey, as early as the year 1794, for he was at his house in that year; said Rose sold the same subsequently to his son, Jonathan Rose, who sold the same to John N. Proctor, who sold the same to the said John Kincaid, who now lives on and occupies the same. This deponent also well recollects that Charles Rector settled on the place or a part of it, now occupied by Benjamin Umstead, as early as the year 1795; said Rector sold the same to this deponent's brother, Charles Metcalfe, who sold the same to John Bell, who sold the same to John Johnson, who sold the same to the said Umstead, who still occupies and lives on the same; and that the other part of said Umstead's place was settled by William Allen about the same time that Rector settled, and Allen sold the same to Drake, and Drake's heirs sold the same to the said Umstead, who yet occupies the same. This deponent also recollects that Abraham Shockey and his father built a saw mill and grist mill on the land occupied by Thomas Blair, in Walden's survey, as early as the year 1800; after which Robert Pogue, or Pogue and Bodly, owned or occupied the same, and sold the same to Tilton and Huston, who sold the same to Gilson Hamick, who sold the same to Benjamin Fitzgerald, who sold the same to Thomas Blair, who now occupies and lives on the same. This deponent further states, that he has lived in the neighborhood of the aforesaid lands ever since the year 1797, and don't know or recollect of any tenant or occupant on any of the land named in his deposition, except the parties therein named; further this deponent saith not.

ELI METCALFE.

STATE OF KENTUCKY, *Mason county, sct:*

The foregoing deposition was this day taken, subscribed, and sworn to, before the undersigned, an acting justice of the peace for said county, at the time and place, and for the purpose stated in the caption thereof. Given under my hand this 22d September, 1845.

LEROY DOBYNS, *J. P.*

The following is the deed of John Johnson and wife to Benjamin Umstead, read by the defendant Umstead:

Deed of J. Johnson and wife to B. Umstead.

This indenture, made this 13th day of March, 1818, between John Johnson and Lucy, his wife, of the county of Mason, and State of Kentucky, of the one part, and Benjamin Umstead, of the county and State aforesaid, of the other part, witnesseth: That the said John Johnson, for and in consideration of the sum of $620, current money, to him in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, to the said Benjamin Umstead, his heirs or assigns, forever, a certain tract or parcel of land situate, lying, and being in the county of Mason, on the waters of Johnston's fork, bounded as follows, viz: Beginning at a black oak, box, elder, and elm, running thence S. 29½° west, 157½ poles, to a stake; thence N. 62 west, 135 poles, to an ash sapling, marked as a corner tree with a knife; thence north 50° E., 171 poles, to a large red oak standing in the field of clift—also a large red oak stump standing near the same; thence south 61° east, 75 poles, to the beginning, containing 103 acres and 60 poles: To have and to hold the said bargained premises, and every part and parcel thereof, to his only proper use, benefit, and behoof. The said John Johnson shall and will warrant, forever defend the same against himself and his heirs, and any other person or persons claiming by, through, or under him or them. But in case the land above described, or any part thereof, should be lost, or taken by any superior or better claim than that of said Johnson's, then and in that case the said Johnson is to refund the purchase money, at the rate of six dollars per acre, (without interest,) for the land so lost or taken.

In testimony whereof the said John Johnson and Lucy, his wife, have hereunto set their hands and seals the day and year first above written.

JOHN JOHNSON, [SEAL.]
LEWSEY JOHNSON. [SEAL.]

Acknowledged in presence of:

STATE OF KENTUCKY, *Mason county, sct:*

I, Marshall Key, clerk of the county court of said county, do certify, that this deed of conveyance from John Johnson and Lucy, his wife, to Benjamin *Umstattd* was this day produced in my office, and acknowledged by the said John Johnson and Lucy, his wife, to be their act and deed; and the said Lucy, wife of the said John Johnson, being examined separate and apart from her husband, and having the said deed fully explained to her, did, freely and voluntarily, without the threats or persuasions of her said husband, relinquish*ed* her dower and right of dower in and to the land and premises conveyed in and by said deed, and was willing that the same might be recorded. Whereupon the

same is duly recorded in my said office. Given under my hand the 30th day of March, 1818.

MARSHALL KEY.

A copy.—Att.

JNO. H. HANNA, *C. C. C. K. D*

The following are copies of papers read by the defendant, Thomas Blair, to wit:

Deed—R. Pogue and wife to B. Fitzgerald.

This indenture, made the sixteenth day of August, in the year 1828, between Robert Pogue and Jane, his wife, of the county of Mason, and State of Kentucky, of the one part, and Benjamin Fitzgerald, of the county and State aforesaid, of the other part, witnesseth: That the said Robert Pogue, for and in consideration of the sum of $10,000, to him in hand paid by John Houston and Richard Tilton, agreeably to the bonds filed in the suit in chancery, Gilson Hambrick against Richard Tilton's administrators and others, the receipt of which is hereby acknowledged, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, unto the said Benjamin Fitzgerald, his heirs and assigns, forever, all that tract or parcel of land situate in the county of Mason, on the Flat fork of Johnston's fork of Licking, and bounded as follows, to wit: Beginning at a black ash and hickory, on the bank of the Flat fork; thence north twenty degrees and thirty minutes east, 114 poles, to a hickory and dogwood; thence north 62° west, $88\frac{6}{10}$ poles, to a haw bush, red oak, sugar tree, box, elder, and hickory, corner to Jas. Morris; thence with his line north 27° east 33 poles, to a stake in said line; thence south 62° 30″ east, 131 poles, to a stone in John Cash's line, in the mouth of a branch between two hickories; thence south 40° 30″ east, 41 poles, to an old white oak, iron wood, dogwood, in Rose's line; thence with the same north 62 west, 17 poles, to his corner, a hickory; thence south 38° west, 85 poles, to a stone on the south bank of the Flat fork; thence south 57° 30″ west, $31\frac{8}{10}$ poles, to the beginning, containing 50 acres, and including the mill now in the possession of Gilson Hambrick: To have and to hold the above described tract of land, and every part and parcel thereof, together with the mill, and all the appurtenances thereunto belonging, or in any wise appertaining to the same, unto the said Benjamin Fitzgerald, his heirs and assigns, forever, to the only proper use, benefit, and behoof of him, the said Benjamin Fitzgerald, and his heirs or assigns. And the said Robert Pogue, for himself, his heirs, &c., doth covenant, to and with the said Benjamin Fitzgerald, and his heirs, &c., that he will warrant and forever defend the above described tract of land from the claim or claims *or claims* of all and every person or persons whatever.

In witness whereof the said Robert Pogue and Jane, his wife, have hereunto set their hands and seals the day and year first written.

ROBERT POGUE, [SEAL.]
JANE POGUE. [SEAL.]

STATE OF KENTUCKY, *Mason county, sct:*

I, Marshall Key, clerk of the county court for said county, certify, that this deed of conveyance from Robert Pogue and Jane, his wife, to Benjamin Fitzgerald was this day produced in my office, and acknowledged by the said Robert Pogue to be his act and deed for the purposes therein mentioned, and the same is duly recorded in my said office. Given under my hand this 16th day of August, 1828.

MARSHALL KEY.

A copy.—Att. JNO. H. HANNA, *C. C. C. K. D.*

Agreement—Tilton, and Huston, and Hambrick.

Memorandum of an agreement made and agreed on between John Houston and Richard Tilton, of the one part, and Gilson Hambrick, of the other part, both of the county of Mason, and State of Kentucky, witnesseth: That the said John Houston and Richard Tilton hath this day bargained and sold their mill and fifty acres of land, lying on the Flat fork of Johnston, and to be in the form as described in Pogue's bond to Houston and Tilton, for the sum of $2,000, payable in four years, in the following manner: and the said Gilson Hambrick, on his part, promises to pay the said John Houston $333⅓ on or before the 1st day of July, 1817, and $333⅓ on the 1st day of July, 1818, also $333⅓ on the 1st day of July, 1819, one thousand dollars in all, to said Houston. Also, he agrees to pay to the above said Richard Tilton $500 on the 1st day of July, 1819, with lawful interest thereon from the 1st day of July, 1816, till paid. Also, he, the said Hambrick, agrees to pay to the said Tilton $500 on the 1st day of July, 1820, with lawful interest thereon till paid, making one thousand dollars in the whole, to the said Houston and Tilton; and when the before mentioned money is paid the *the* [said] Huston and Tilton *is* to give said Gilson Hambrick Pogue's bond *for the bond* for the title, with an order on said Pogue to convey the same to said Hambrick, with a receipt from said Pogue that the $2,000 has been paid to him for the mill; and said Hambrick agrees to take said Pogue for the title of said mill and land.

Witness our hands and seals this 13th day of April, 1816.

JOHN HOUSTON, [SEAL.]
RICHARD TILTON, [SEAL.]
GILSON HAMBRICK. [SEAL.]

Attest: JAMES N. WILSON.

For value received, I assign the within bond to Benjamin Fitzgerald. Witness my hand and seal, this 21st day of April, 1828.

G. HAMRICK. [SEAL.]

A copy. Attest: MARSHALL KEY, *Clerk.*

Bond — Robert Pogue to Tilton & Huston.

Know all men by these presents, that I, Robert Poague, of the county of Mason and State of Kentucky, doth bind myself, my heirs and as-

signs, unto Richard Tilton and John Huston, their heirs and assigns, of the county and State above said, in the penal sum of $4,000, which payment, well and truly to be made, I bind myself, my heirs and assigns, by these presents, unto the said Richard and John above mentioned, their heirs and assigns.

In witness whereof I have hereunto set my hand and seal, this 28th day of April, 1813. [SEAL.]

In presence of—

The condition of the above obligation is such, that if the above bound Robert Pogue shall well and truly make, and cause to be made, a good and sufficient warranty deed unto the above mentioned Richard Tilton and John Huston, their heirs and assigns, for the grist mill he now owns on the Flat fork, with 50 acres of land thereunto belonging, including the lot on which the mill is erected, and the balance to be laid off adjoining Cash and Drake's line, so far as to lie in a good form, and to warrant and defend the said mill and land from himself, his heirs and assigns, and all other persons, forever, then this obligation to be void, otherwise to remain in full force and virtue.

Witness my hand and seal, this date above.

ROBERT POGUE. [SEAL.]

AARON H. YOUNG,
JOHN H. POGUE.

A copy. Attest: MARSHALL KEY, *Clerk.*

April the 13th, 1816.

Being informed that Richard Tilton and John Huston has sold the mill mentioned in the within agreement to Jilson Hamrick, and I do hereby agree to convey the title to said Hamrick when he produces to me this bond. ROBERT POGUE.

J. H. POGUE.

A copy. Attest. MARSHALL KEY, *Clerk.*
A copy. Attest: JNO. H. HANNA, *C. C. C. K. D.*

Deed — B. Fitzgerald to Thomas Blair.

This indenture, made this 20th day of September, 1832, between Benj. Fitzgerald, of the county of Daviess and State of Indiana, of the one part, and Thomas Blair, of the county of Mason and State of Kentucky, of the other part, witnesseth: That the said Benjamin Fitzgerald, for and in consideration of the sum of $600 to him in hand paid, or secured to be paid, by the said Thomas Blair, to him, the said Benj. Fitzgerald, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, sell, alien, and convey, unto him, the said Thomas Blair, all that tract or parcel of land situate, lying, and being in the county of Mason, containing 50 acres, more or less, and bounded as follows, to wit: Beginning at a black ash and hickory on the Flat fork of Johnson's fork; thence N. 20° and thirty minutes east, 114 poles, to a hickory and dogwood; thence north 62° west, 88 $\frac{2}{10}$

poles, to a haw bush, red oak, and sugar tree, rose, elder, and hickory, corner to Jas. Morris; thence with his line north 27° E., 30 poles, to a stake in said line; thence S. 60° and thirty minutes east, 131 poles, to a stone in John Cash's line in the mouth of a branch between two hickories; thence south 4° and thirty minutes E., 41 poles, to an old white oak, iron wood, and dogwood, in Rose's line; thence with the same North 62° W., 17 poles, to his corner, a hickory; thence S. 38° W., 85 poles, to a stone on the south side of the Flat fork; thence S. 57° and thirty minutes W., 31 $\frac{3}{10}$ poles, to the beginning; being the same tract conveyed by Robert Pogue to Benjamin Fitzgerald, by deed bearing date the 16th day of August, 1828, including thereon a mill. To have and to hold the said tract or parcel of land above described, together with all and singular the privileges and appurtenances thereunto belonging, or in anywise appertaining to the same, unto the said Thomas Blair, his heirs and assigns, forever, and to their only proper use and benefit and behoof. And the said Benjamin Fitzgerald, for himself, his heirs, executors, and administrators, doth hereby covenant, to and with the said Thomas Blair, his heirs, executors, and administrators, that in case the land hereby conveyed shall be taken or lost by any better or prior claim, that in that event the said Fitzgerald will refund to him, the said Thomas Blair, the purchase money thereof, without interest.

In testimony whereof the said Benjamin Fitzgerald and Sarah Fitzgerald, his wife, who hereby relinquishes her right of dower of, in, and to the land and premises herein conveyed, have hereunto set their hands and seals the day and year first above written.

B. FITZGERALD, [SEAL.]

her
SARAH X FITZGERALD. [SEAL.]
mark.

STATE OF KENTUCKY, *Mason county, sct:*

I, Marshall Key, clerk of the county court for said county, do certify, that this deed of conveyance from Benjamin Fitzgerald and Sarah, his wife, to Thomas Blair, was this day produced in my office, and acknowledged by the said Benjamin Fitzgerald and Sarah, his wife, to be their act and deed, for the purposes therein mentioned; and the said Sarah being by me examined separate and apart from her said husband, and having the said deed fully explained to her, again acknowledged the same, and freely and voluntarily relinquished all her right and title to dower in and to the land and premises thereby conveyed, without the threats or persuasions of her said husband, and was willing the same should be recorded, and the same is recorded in my said office.

Given under my hand, this 20th day of September, 1832.

MARSHALL KEY.

A copy attest: MARSHALL KEY, *Clerk.*
A copy attest: JNO. H. HANNA, *C. C. C. K. D.*

The following are papers read by the defendant, John N. Proctor, to wit:

Deed—Jonathan Rose to Jonathan H. Rose.

This indenture, made this 2d day of July, in the year of our Lord 1827, between Jonathan Rose, of the county of Fleming and Commonwealth of Kentucky, of the one part, and Jonathan H. Rose, of the county of Fleming and State aforesaid, of the other part, witnesseth: That the said Jonathan Rose, for and in consideration of the sum of $700 current money of Kentucky, to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents do grant, bargain, sell, and confirm, unto the said Jonathan H. Rose, his heirs and assigns, all that tract or parcel of land situate and being in the county of Fleming, on the waters of the Flat fork of Johnston's, containing 130 and a quarter acres, and bounded as follows, to wit: beginning at a white oak and buckeye standing on the north side of a branch, west corner of the land of Fyffes' heirs; thence north 62½ west, 158 poles, to a buckeye, two sugar trees, and black oak; thence north 21 east, 44 poles, to a black ash and hickory on the bank of the creek; thence north 57½ east, 31 $\frac{8}{10}$ poles, to a stone on the south bank of the Flat fork; thence north 38 east, 85 $\frac{8}{10}$ poles, to a hickory (both the last named corners being corners of Pogue's mill tract;) thence south 62½ east, 110 poles, to two blue ashes and a sugar tree; thence south 21 west, 158 poles, to the beginning; being the same land conveyed by Bodley and Pogue to said Jonathan Rose; together with all and singular the personal property in possession of, and now owned by said Jonathan Rose, together with all and singular the premises thereunto belonging or in any wise appertaining. To have and to hold the land hereby conveyed, and the appurtenances, unto the said Jonathan H. Rose, his heirs and assigns, forever; and the said Jonathan Rose, for himself, his heirs, executors, and administrators, the aforesaid tract of land and premises, unto the said Jonathan H. Rose, his heirs and assigns, against the claim or claims of all and every person or persons whatever, claiming through or under him, but against no others whatever, does and will forever defend by these presents.

In witness whereof the said Jonathan Rose has hereunto set his hand and seal, the day and date first above written.

JONATHAN ROSE,
her
ELIZABETH × ROSE.
mark

Acknowledged in presence of—

———— ————.

FLEMING COUNTY, *sct:* *July 2d*, 1827.

As deputy clerk of the Fleming county court, I certify, that this deed, from Jonathan Rose to Jonathan H. Rose, was this day produced before me, and duly acknowledged by said Jonathan Rose to be his act and deed, and the same is duly recorded.

JAS. CRAWFORD, *D. C.*

FLEMING COUNTY, *sct:* *October 18th*, 1828.

As deputy clerk of the Fleming county court, I certify, that this deed, from Jonathan Rose and Elizabeth, his wife, to Jonathan H. Rose, was this day produced before me, and the said Elizabeth being examined by me, privily and apart from her said husband, declared that she did freely and willingly seal and deliver said *said* writing and wished not to retract it, and ack nowledged said writing again shewn and explained to her to be her act and deed, and consenteth that the same may be recorded, which is done.

G. W. STOCKTON.

A copy. Attest: JNO. H. HANNA, *C. C. C. K. D.*

Deed—J. and J. H. Rose to Jno. N. Proctor.

This indenture, made this 22d day February, in the year of our Lord 1828, between Jonathan H. Rose, and Jonathan Rose and Elizabeth, his wife, of the county of Fleming, and Commonwealth of Kentucky, on the one part, and John N. Proctor, of the county of Fleming, and Commonwealth aforesaid, of the other part, witnesseth: That the said Roses, for and in consideration of the sum of $1,625, current money of Kentucky, to Jonathan H. Rose in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and confirm, unto the said Proctor, his heirs and assigns, all that tract or parcel of land situate and being in the county of Fleming, on the waters of the Flat fork of Johnston, containing one hundred and thirty and a quarter acres, and bounded as follows, to wit: beginning at a white ash and buckeye, standing on the north side of a branch, southwest corner of the land of Fyffe's heirs; thence north 62½ west, 158 poles, to a buckeye, two sugar trees, and black oak; thence north 21 east, 44 poles, to a black ash and hickory on the bank of the creek; thence north 57½ east, 31 $\frac{8}{10}$ poles, to a stone on the south bank of the Flat fork of Johnston, thence north 38 east, 85½ poles, to a hickory (both the last named corners being corners of Pogue's mill tract;) thence south 62½ east, 110 poles, to two blue ashes and a sugar tree; thence south 21 west, 158 poles, to the beginning; being the same land conveyed by Jonathan Rose to Jonathan , by deed, dated 2d July, 1827, together with all and singular the premises thereunto belonging or in any wise appertaining. To have and to hold the land hereby conveyed, and the appurtenances, unto the said Proctor, his heirs and assigns, forever. The said Jonathan Rose only conveying, without warranty, a life estate which he held by virtue of a lease from said Jonathan H. Rose; and the said Jonathan H. Rose, for himself, his heirs, executors, and administrators, the aforesaid tract of land and premises unto the said Proctor, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever, so far as to refund the purchase money without interest, in case said land should be lost by a better claim than the one thereby conveyed, does and will forever defend by these presents.

In witness whereof the said Jonathan H. Rose, and Jonathan Rose and wife, have hereunto set their hands and seals the day and date first above written.

JONATHAN H. ROSE, [SEAL.]
JONATHAN ROSE. [SEAL.]

FLEMING COUNTY, *sct:*

February 22d, 1828.

As deputy clerk of the Fleming circuit court, I certify, that this deed, from Jonathan H. and Jonathan Rose to John N. Proctor, was this day produced before me, and acknowledged by said Roses to be their act and deed, and the same is duly recorded.

JAMES CRAWFORD, *D. C.*

FLEMING COUNTY, *sct:*

April 29th, 1836.

A true copy. Attest: G. M. STOCKTON,
Clerk pro tem. of the Fleming county court.
A copy. Attest: JNO. H. HANNA, *C. C. C. K. D.*

The following is the report of the Master, to wit:

[For plat see original.]

AMBROSE WALDEN'S Heirs, against BODLEY'S Heirs. } In chancery.

Explanation.

7, 8, 9, 10, and red lines, Walden's entry; 7, 8, 9, 10, and black lines, Walden's patent; C, E, F, G, black and dotted lines, Craig's 400 acres laid down by protraction. In pursuance to the order of the court, I have laid down the patent and entry of Walden from the plats filed in the cause, and also the patent of Johnson, upon the diagram of the patent calls of Waldens, represented by letters 7, 8, 9, 10, in black ink.

I have laid down the 400 acres laid off by Whitfield Craig, for Lewis Craig as locator, assuming as the beginning corner at 9, and running with the line in the direction to 8, 155 poles; thence at right angles, 329 poles; thence to the original line of Walden's patent, running from 9 to 10, south 51 W., 168 poles; and thence to the beginning. Upon the 400 acres thus laid down to Craig I have transferred, from the last plat returned in the cause, the parts thereof claimed by Rose and Crupper, Tracy and Umstead. I find nothing in the papers from which I am enabled to find the true position of these claims; the 400 acres to Craig is laid down by protraction upon the scale of 90 poles to the inch, being the scale found upon the plat last returned in the cause; there is nothing

in the papers from which I can find the position of any of the corners called for in the 400 acres laid off to Craig, except the beginning corner at C and 9 on the diagram. If these corners be found, and they should vary from the course and distance given, then the position of the tract of 400 acres would be changed from the position assumed for it upon the diagram. Assumed August 13th, 1846.

J. C. HERNDON, *M. C.*

A copy. Attest: JNO. H. HANNA, *C. C. C. K. D.*

The following is the surveyor's report read by defendant Waldens, to wit:

Notice.

To Messrs. Thos. Blair, Benjamin Umstead, and John Kincaid:

Take notice, that on the first day of June, 1847, I will attend on the ground now in controversy between Bodley's heirs, Pogues and others, complainants, and Ambrose Walden's heirs, defendants, in a suit in chancery, now depending in the 8th circuit court of the United States, and then lay off and survey the same as either party may direct, and will continue the work from day to day until it is completed. May 31st, 1847.

We, the said Thos. Blair, Benjamin Umstaddt, and John Kincaid, parties in the suit above named, having no further surveying to be done in the above suit, acknowledge the above to be a good and sufficient notice, and that the defendants, Walden's heirs, may go on and execute the order of the honorable court, made in said suit under the above motion. Witness our hands the said 1st day of June, 1847.

BENJAMIN UMSTATTD,
THOMAS BLAIR,
JOHN KINCAID.

Surveyor's report.

MASON COUNTY, *set:*

June 1st, 1847.

THOS. BODLEY'S heirs, and others, complainants, against AMBROSE WALDEN'S heirs and al., defendants. } In chancery.

I this day met the parties litigant on the land in controversy between them in this suit, and in obedience to an order and a decree of the circuit court of the United States, 8th circuit, Kentucky district, rendered herein on the 13th day of August, 1846, I respectfully report all the matters of fact in relation to the premises in controversy, the collection of which is delegated to me by the decree aforesaid, which came to my knowledge. In doing which, on a former occasion, in the presence of the parties, I commenced at the S. E. corner of Walden's survey of 1333 acres, as originally made and granted to him by patent, (represented on the plat above by figure 9, heretofore shown by General Simon Kenton,) and ran by a line thereof, in pursuance of Whitfield Craig's

survey of the locator's interest; in said survey N. 22½° E., 157 poles, (distance over holding 2 poles, and course varying ½° to the left hand,) to a stake, the N. E. corner of the tenement formerly in the possession of Jonathan Rose, (now of John Kincaid,) shown as such by John N. Proctor, (at 1;) thence N. 60° W., with the locator's line, 330 poles, (distance over holding 1 pole, and course varying 1° to the left,) to a stake in Johnson's line, (at 2;) thence with that line S. 52° W., (corresponding variation,) 169 poles, (1 pole over,) to two of three white oak trees, the S. W. corner of Johnson's survey, as originally made, (at 3;) and thence S. 60° 9' E., 413 poles and 20 links, to the beginning, embracing an area of 363 acres and 13 poles, instead of 400 acres as reported by Whitfield Craig. This I report to be the land allotted to Lewis Craig, by commissioners, as the locator's interest in said Walden's survey, ascertained as above stated. The trees cornered upon at 1 and 2 being gone in the first instance, a road in the second bordering on cleared land, but terminating in Johnson's line, as called for and shewn by Joseph Duncan of this tract. (locator's part.)

1, 9, 4, 5, 6, 11, 1. Represents 149 acres, 1 rood, and 29 poles, by actual survey now in the possession of John Kincaid, holding under John N. Proctor, who held under Rose. See Depositions of Joseph Duncan and James Morris.

1, a, b, 4, 5, 6, 11, 1. That part of the 149 acres, 1 rood, and 29 poles, lying within Walden's patent and entry.

15, 14, 5, 6, 11, 15. That part of the Hambrick tract lying within the locator's part, now in the possession of Thos. Blair, who holds title under Thomas Fitzgerald by deed in 1832. Tilton & Huston were contractors with Robert Pogue for this, and the residue of the Hambrick tract they sold to Hambrick, he afterwards to Fitzgerald, who obtained a conveyance from Pogue about the year 1829. Statement of Thomas Blair. This part of the Hambrick tract contains 15 acres, 1 rood, and 7 poles, by survey.

11, 30, 31, 32, 11. The balance of the Hambrick tract in the possession of said Blair outside of the locator, said to contain 30 acres covered in common by Walden's two surveys.

4, 12, 13, 14, 4. Represents 14 acres, 3 roods, and 8 poles, within the locator, in the possession of said Blair, held by purchase from Robert Pogue, who held under Lewis Chapin. No title or conveyance has yet passed. Statement of said Blair. This tract has never had a regular tenant upon it. Statement of Jos. Duncan.

2, 21, 22, 12, 13, 14, 16, 17, 18, 19, 20, 2. Represents 149 acres and 28 poles, part of the locator's interest, now in the possession of Benjamin Umstadt, a part of which, say 79 acres, he holds by purchase from Johnson; 45 acres, without specific boundary, by purchase from John Drake Taylor; and the balance, 25 acres, by purchase from Larken A. Sandridge, also without boundary. The 45 and 25 acres lie within what is termed in the ejectment the Tracy tenement, per statement of said Umstadt. That part of the land which Umstadt held, to which the deposition of Joseph Duncan particularly relates, is repre-

sented on the connected plat by fig. 2, 3, 33, 20, 2; that of James Morris to the whole of the land in Umstadt's possession.

21, 3, 22, 21. Represents 14 acres, 2 roods, and 36 poles, part of the Umstadt tract, which he sold to Wm. Allen in 1813. Allen afterwards, say in 1816, sold the same to one Wm. Craig, whose widow and heirs are now in the possession of it. This part of the Umstadt tract forms no part of the 149 acres and 28 poles now in his possession.

15, 16, 17, 18, 19, 20, 15. Represents 19 acres, 3 roods, and 28 poles, part of the Tracy tenement, which Sandridge sold to John N. Proctor about the year 1832. Proctor afterwards sold to Jeremiah Wells; and in or about the month [of] June last, the same land was sold at auction, and stricken off to Richard Henry Lee, of Maysville, in this county. Statement of Jo. Duncan and Thomas Blair.

7, 8, 9, 10, 7, Walden's patent; 23, 24, 25, 26, 23, Walden's entry; 27, 28, 29, 3, 27, Johnson's patent—as heretofore reported.

21, c, d, 22, 21, the part of Wm. Craig, &c., 14 acres, 2 roods, and 36 poles, lying within Walden's two surveys.

D, e, f, b, d, part of the land covered in common by the two surveys of Walden, in wood and cleared land in about equal portions, and is claimed by Applica Pepper, Lucy Pepper, Thos. Blair, and Jeremiah Wells, and statement of Mr. Duncan. I am in the possession of no evidence by which to shew the boundary or a diagram of the sales made by Lewis Craig to Rose, Rector, and Allen, or either of them; nor of Allen to Chapin; nor of Rose to Shocky; nor Allen to Drake. Many of these sales seem to have been made unaccompanied by boundary or conveyance. The master commissioner erred in giving position to the locator's interest at a right angle to Walden's S. E. line, instead of leaving it by an inclusive angle of 97° as required by the survey of Whitfield Craig in the record, and as represented on the plats returned in the ejectment. No evidences of title in writing were produced by the parties on the present occasion. The parties did not require any further surveying to be done. Having thus reported all matters within my control, touching the premises, and not heretofore reported, I respectfully submit the same to the inspection and consideration of your honors.

ATHELSTON OWENS,
Surveyor of Mason county.

Copy [of] record.

A. WALDEN
vs.
CRAIG & SHOCKY.

The following is the record of the ejectment suit of Ambrose Walden against Craig and Shockey, to wit:

Pleas before the hon. Harvy Innis, judge of the district court of the U. States of America, in and for the Kentucky district, holden at the Capitol, in the town of Frankfort, on the 19th day of June, in the year A. D. 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, holden in and for the Kentucky district, in the month of March, in the year of our Lord, 1797, came John Den, lessee of Ambrose Walden, by his attorney, and filed the following declaration in ejectment, to wit:

KENTUCKY DISTRICT, *to wit:*

John Den complains of Richard Fen, in custody, &c.; for that, to wit, *that* whereas Ambrose Walden, on the 15th day of August, in the year of our Lord 1789, in Mason county, in Kentucky district aforesaid, had demised and granted, and to farm let, to the said John Den four dwelling houses, twenty out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in Mason county aforesaid; to have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the date of the said lease until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Richard Fen afterwards, to wit, on the day and year aforesaid, in the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John Den, so ejected, drove out, and amoved from his said possession, and then and there did other injuries to him, against the peace, and to the damage of the said John Den sixty dollars, and therefore he brings suit, &c.; pledges to prosecute.

WM. CLARK, *Attorney for plaintiff.*

JOHN DOE & RICHARD ROE:

I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment, or to some part thereof; and I being sued as casual ejector in this action, and having no claim or title to the said premises, do advise you to appear on the first day of next March term, in the court of the United States, for the district aforesaid, by some attorney of that court, and then and there by rule of that court cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession. 28th January, 1797.

Your loving friend,

RICHARD FEN.

MASON COUNTY, *sct:*

On the twenty-second day of February, 1797, Thomas McGlauton came before the subscriber, one of the justices of the peace for said county, and made oath that he did, on the 17th day of this present month, February, deliver a copy of the foregoing declaration and no-

tice on the premises in the foregoing declaration mentioned, unto Abraham Shockey, he being tenant in possession of part of the premises in said declaration mentioned; and that he also, on said day, did deliver another copy of the said declaration and notice to the wife of Charles Rutter, one other tenant in possession of another part of the premises in the said declaration mentioned; and also, on the same day, did deliver another copy of the said declaration and notice to the wife of William Allen, one other tenant in possession of [an]other part of the premises in the said declaration of ejectment mentioned; and the deponent further saith, that he told them all severally that it was a declaration in ejectment, and unless they did appear by some attorney of the court of the United States for said district the next ensuing term, there would be judgment thereupon against the defendants by default, and they would be turned out of possession, or words to that effect.

WM. NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made herein, viz:

It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action, it is therefore ordered by the court, that the said defendants appear on the 1st day of the next term, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto; or, on failure thereof, (they having notice of this order,) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff.

And afterwards, to wit, at the March term, in the year 1798, the following order was made herein, to wit:

On motion, it is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, Abraham Shockey, be made defendants to this suit instead of the casual ejector, Richard Fenn, and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein mentioned, and plead thereto not guilty, and agree to insist upon the title only at the trial. And it is further ordered, that if upon the trial of the issue a verdict should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself does not pay them. Whereupon the said defendants, by their attorney, confess the lease, entry, and ouster in the declaration supposed, and agreed to insist upon the title only at the trial. And the said defendants come and defend the force and injury, when and where, &c., and say that they are in no wise guilty of the trespass and ejectment, in manner and form as the plaintiff against him hath complained, and of this they put themselves upon the country; and the plaintiff doth so likewise.

And it is further ordered, that Miles W. Conway do go on the land in controversy between the parties, on the day of next, if fair, if not on the next fair day, and then and there lay off the same as either party shall direct, having regard to all deeds and other evidence that may be produced, report all matters of fact specially, and return four fair plats and certificates into the clerk's office of this court before the day of hearing; and the sheriff of Mason county is directed to attend the said surveyor to remove force, should any be offered; and further proceedings are continued until the next court.

And afterwards, to wit, at the June term of the court aforesaid, to wit, 19th day of June, in the year 1800, the following special case was submitted to the court, by consent of the parties herein, by their attorneys:

The tract of land marked on the plat by the letters A, B, C, D, was duly granted to the said Walden, lessor of the plaintiffs, by patent from the Commonwealth of Virginia, bearing date the 21st day of November, 1786.

The said Walden and Simon Kenton executed the agreement marked A, respecting the locating of said lands; the said agreement is made part of this case.

The defendants are in possession of that part of the tract marked on the plat by the letters E, F, G, C, and claim the said part of the said tract of land under the said agreement A, and the endorsement thereon, and a division thereof made, as certified by the report B; which report and endorsement on said agreement is also made a part of this case.

If upon the whole the court shall be of opinion that the legal title to the said part of the said tract of land marked on the plat as aforesaid by the letters E, F, G, C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendants.

WM. CLARK, *Att. for plaintiff.*
THO. TODD, *Att. for deft's.*

And the court having fully considered and understood the case, is of opinion that the legal title to the said part of the said tract of land marked on the plat E, F, G, C, is in the plaintiff, and was on the day of filing the declaration in this suit.

It is therefore considered by the court, that the plaintiff recover against the said defendants, Lewis Craig and Abraham Shockey, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendants, in mercy, &c.

And on motion of the plaintiff, by his attorney, the United States' writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of the terms aforesaid returnable to the next court. The following are the exhibits made part of the agreed case:

MASON COUNTY, *sct:*

We, the commissioners, appointed by the worshipful the court of Mason aforesaid, for the purpose of dividing lands held in partnership

between citizens of this commonwealth and non-residents, and being called on to divide a tract of land containing 1333 acres, patented in the name of Ambrose Walden, between him, the said Ambrose, and Lewis Craig, assignee of Craig and Johnson, assignee of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig as aforesaid, proceeded on this day to divide the same in the said proportions, that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit: beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for on the original patent; thence north 22° east, with the old line 145 poles, to the two white ashes and sugar tree; thence north 61° west, 329 poles, to a walnut and two red oaks in Johnson's line; thence south 51° west, with Johnson's line 168 poles, to three white oaks in John Walden's line; thence to the beginning, containing 320 acres To have and to hold the said quantity of 320 acres to him, the said Lewis Craig, and assigns forever, free and clear from the let, molestation, and hindrance of him, the said Ambrose Walden, his heirs, &c., forever, and to hold to him, the said Lewis Craig, his heirs, &c., in severalty and no longer, subject to the claim of him, the said Walden Also divided the said tract of land as follows, to wit: beginning at two white oaks and sugar tree in John Walden's line, and corner to Lewis Craig; thence north 22 east, 375 poles, to a red oak and honey locust; thence north 68 west, 260 poles, to a white oak and box elder, in Jacob Johnson's line; thence with said line south 39 east, 112 poles, to two buckeyes and white oak, east corner to said Johnson; thence south 51 west, 340 poles, to a walnut and two red oaks, corner to Lewis Craig; thence south 61 east, 329 poles, to the beginning: To have and to hold the said tract of land, containing 640 acres, to him, the said Ambrose Walden, and his heirs, &c., forever, in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns, forever.

And we, the said commissioners, do certify and declare, that the residue of the said survey, in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is, on that account, left in tenancy in common between the said Ambrose Walden and the said Lewis Craig, and subject to a future division, as the event of the said interference may justify.

In witness whereof we, the said commissioners, have hereunto set our hands, and affixed our seals, this 10th day of February, 1794.

DAVID MORRIS. [SEAL.]

Signed, sealed, and delivered before—

D. V. PAYNE. [SEAL.]

MASON COUNTY, *sct:*

April court, 1797. This division of lands between Walden and Craig was returned by the commissioners, and ordered to be recorded.

Teste: THOS. MARSHALL, *J. M. C.*

[REC. CLXXX, D. T. 1847.]—7

B.

Articles of agreement made and done this 1st day of May, 1780, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Caroline county, Virginia, witnesseth: That the said Simon Kenton doth bind himself to locate 10,000 acres for the said Ambrose Walden in the district of Kentucky, in consideration of which the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of one-third of the said ten thousand acres so located unto the aforesaid Simon Kenton, respect being held to quality and other local advantages; and, lastly, both parties bind themselves to the performance of the premises under the penalty of fifty thousand pounds.

his
SIMON ⋈ KENTON, [SEAL.]
mark.
AMBROSE WALDEN. [SEAL.]

Signed, sealed, and delivered in presence of—
AGNUS CAMERON,
JOSEPH MAHITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest of the within articles to John Craig and Robert Johnson, this 24th day of April, 1787.

SIMON KENTON.

JOHN WILSON,
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May 18, 1791.

ROBERT JOHNSON.

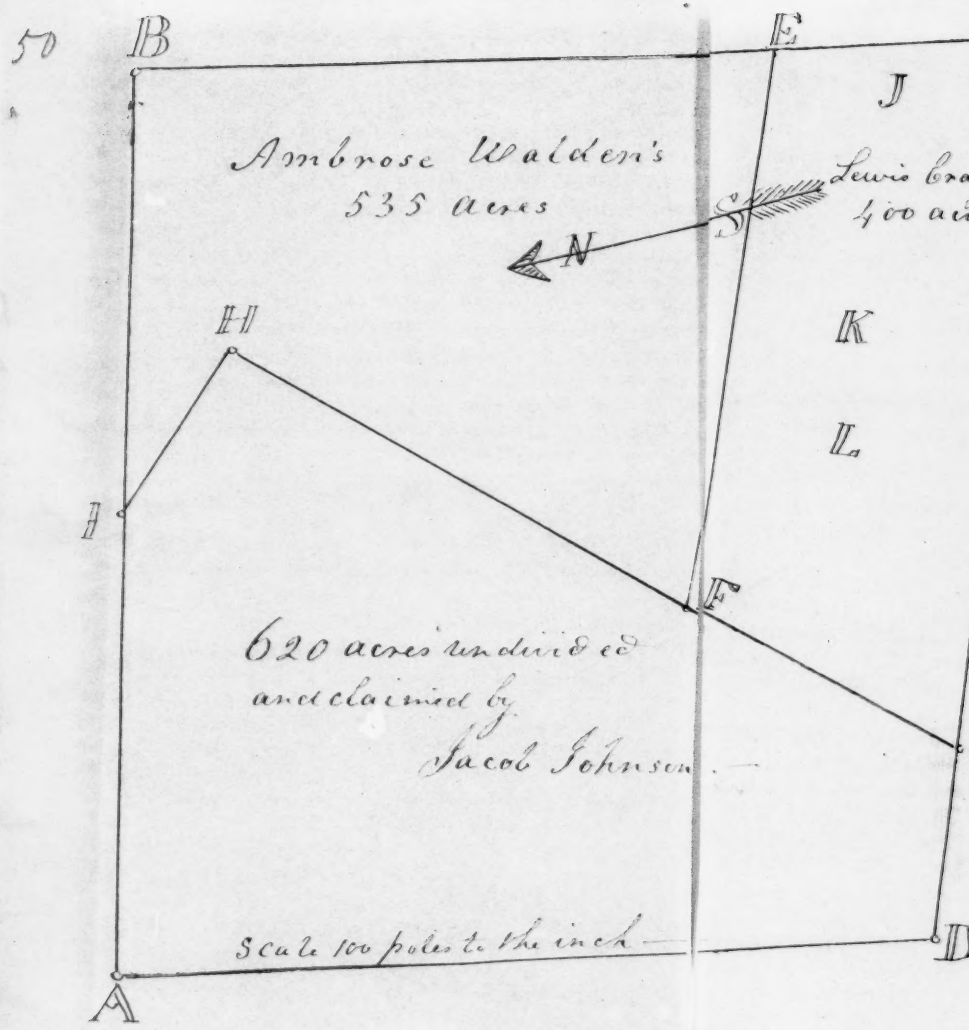
TOLIVER CRAIG.

We assign to Lewis Craig the third part of the three thousand acre entry in the name of Walden, and one-third of three thousand acre entry in the name of John Taylor, and one-third of one thousand five hundred acres in the name of William Nelson. John Craig's interest is only given up, December 28th, 1793.

ROBERT JOHNSON,
Trustee to John Craig.
ELIJAH CRAIG,
Trustee to John Craig.

[For plat see original.]

The whole of this land is now claimed and contended for by Thomas Bodley and Jas. Hughes. February 10th, 1794.


50
B
E
J
Ambrose Walden's
535 acres
Lewis Cra
400 ac
N
H
K
L
H
F
620 acres undivided
and claimed by
Jacob Johnson
Scale 100 poles to the inch
A
D


C
Craig's
acres
G
D

ham Shockey, his term yet to come of and in four dwelling houses, twenty out-houses, fifteen acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Craig and Shockey afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John, so ejected, drove out, and amoved from his said possession; whereof the said Craig and Shockey are convict, as appears to us of record.

Therefore, we command you that, without delay, you cause the said John Den to have his possession of his farm aforesaid yet to come, of and in the lands and tenements aforesaid, with the appurtenances, and how you shall execute this writ, make appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the 3d Monday in Nov. next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereto affixed this 4th day of August, 1800, and of our independence the 25th.

Test: THOS. TUNSTALL, *C. K. D. C.*

This execution was returned by A. Walden 5th Sept., 1811.

And on the 14th Sept., 1811, the above habere facias was renewed, delivered to A. Walden, and returned by him 16th May, 1812.

And on the 2d day of June, 1812, the following habere facias was issued, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court, by judgment of the said court, hath recovered of Lewis Craig and Abraham Shockey, his term yet to come of and in four dwelling houses, twenty out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the 15th day of August, A. D. 1789, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said

tenements, with the appurtenances, and was thereof possessed, until the said Craig & Shockey afterwards, to wit, on the same day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, from his farm aforesaid, his said term not being yet ended, and kept out, and still doth keep out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Shockey are convict, as appears to us of record.

Therefore, we command you that, without delay, you cause the said Jno. Den to have his possession of his farm aforesaid, with the appurtenances, and how you shall have executed this writ make appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the 1st Monday in August next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 2d day of June, A. D. 1812, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

Marshal's return, to wit:

Stayed by supersedeas; 62 miles travelling.

And afterwards, to wit, on the 8th day of June, 1812, came Craig and Shockey, and filed the following petition and order for supersedeas, to wit:

Petition of Craig and Shockey.

To the honorable the judges of the circuit court of the United States, for the 7th circuit, for the district of Kentucky, respectfully sheweth: Your petitioners, Lewis Craig and Abraham Shockey, that, at the June term 1800, a judgment in ejectment was entered against them in the court of the United States for the Kentucky district, in an action of ejectment brought by the lessee of Ambrose Walden for four dwelling houses, &c.; on which, since the last term of the court, an habere facias possessionem has been issued against them. Your petitioners are advised that the issuing of the said habere facias is both irregular and illegal, and they are furnished by their counsel with the following assignment of error:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811. No execution ought to have issued after a lapse of a year after the entry of judgment, without a sciere facias. Reum on ejectment, 142.

2dly. The term had expired before the entry of judgment; of course the judgment itself is impeachable, but is sufficient for the petitioners that no habere facias can legally issue when the term has expired. Reum 146, '7, 283, 122.

J. HUGHES,

For Craig and Shockey.

Order for supersedeas.

Issued a supersedeas agreeably to the foregoing petition, taking bond

and security according to law. Witness my hand as judge of the said district, this 6th day of June, 1812.

HARRY INNIS.

To JNO. H. HANNA,
Clerk U. S. C. C., &c.

Injunction Bond.

Know all men by these presents, that we, Lewis Craig, Abraham Shockey, and Thomas Bodley, all of the State of Kentucky, are held and firmly bound unto Ambrose Walden, of the State of Virginia, in the sum of $1,000; to which payment, well and truly to be made to the said Walden, his heirs, executors, administrators, or assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 8th day of June, A. D. 1812.

The condition of the above obligation is such, that whereas the above bound Craig and Shockey have this day obtained a writ of supersedeas to stall all further proceedings upon a writ of habere facias which issued from the office of the district court of the United States, in and for the Kentucky district, on the 2d day of June, 1812, wherein John Den, lessee of the above named Ambrose Walden, is plaintiff, and the said Craig and Shockey are defendants, for the possession of four dwelling houses, twenty out houses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid; now if the said Craig and Shockey shall prosecute the said supersedeas with effect, or, in case of failure thereof, the said Craig and Shockey and Bodley shall well and truly pay, or cause to be paid, all such damages and costs as may be awarded against the said Craig and Shockey, in case the proceedings aforesaid shall be affirmed, then the above obligation to be void, or else remain in full force and virtue.

THOMAS BODLEY, [SEAL.]
By J. HUGHES, *his attorney in fact.*

S. J. M. MAJOR.

Supersedeas.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded that, from all further proceedings on a habere facias, issued from the clerk's office of the district court of the United States, in and for the Kentucky district, on a judgment in that court wherein the said John Den, lessee of Ambrose, is plaintiff, and Lewis Craig and Abraham Shockey are defendants, which habere facias issued the 2d day of June, A. D. 1812, against the said Craig and Shockey, for the possession of four dwelling houses, twenty out houses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in

the county of Mason, and district aforesaid, you altogether supercede; which habere facias, before the judges of our 7th circuit court of the United States, in and for the Kentucky district, is brought to be corrected on the petition of the said Lewis Craig and Abraham Shockey, who have given bond and security to prosecute with effect; and, if the proceedings aforesaid should be affirmed, to satisfy and pay all such damages and costs as shall be awarded against them.

We command you to give notice to the said Ambrose Walden that he be before the judges of our said 7th circuit court, at the Capitol, in the town of Frankfort, on the first Monday in November next, to shew cause why the said habere facias should not be quashed, and have then there this writ.

In testimony whereof, John Marshall, esq., chief justice of the said United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return.

Executed 17th June, 1812; 62 miles travelling.

JOHN A. MITCHELL, *Deputy.*
For ROBERT CROCKETT.

Order quashing executions.

And afterwards, to wit, at the May term, 1813, of the 7th circuit court of the United States, in and for the Kentucky district, the following order was made herein, to wit:

The court being now sufficiently advised of and concerning the premises, do order that the executions issued herein be quashed, they having been issued after the expiration of the demise in the declaration, and that the plaintiffs recover, against the lessor of the defendant, their costs in this behalf expended.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1817, to wit, at a continuation of said term, on the 5th day of August next ensuing, the following order was made herein, to wit:

This day came the plaintiff in the foregoing suit, and moved the court for a rule on the defendants aforesaid, to shew cause, on the 6th day of the next term of this court, why the demise in the declaration should not be extended.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1824, (until which time the motion to extend the demise in the declaration was continued,) the following order was made in this suit, to wit:

Order extending demise.

On motion of the plaintiff, by his attorney, leave is given to amend the declaration, by extending the demise to fifty years, which is done accordingly, but execution not to go out before the first day of March next.

Petition of Blair.

And afterwards, to wit, on the 8th day of May, in the year 1835, came Thomas Blair into the court aforesaid, and filed the following petition, to wit:

To the honorable the judges of the United States circuit, for the 7th circuit and Kentucky district: Your petitioner, Thomas Blair, humbly represents, that in the year 1797 a certain Ambrose Walden, on the demise of John Den, instituted an action of ejectment in the district court of this district, against Richard Fen, as casual ejector, and during the following year Lewis Craig and Abraham Shocky were admitted to defend said suit, and at the June term, 1800, a judgment was rendered in favor of said Walden for the land then in possession of said Shockey, the tenant in possession; but no writ of possession has ever been executed to this day; that the demise in said declaration was laid at ten years from the 15th day of August, 1789, and of course expired on the 15th day of August, 1799, and remained dead and inoperative for upwards of 24 and nearly twenty-five years; by which lapse of time, as your petitioner is advised, the possession ripened into a complete legal estate; but at the May term, 1824, of your honorable court, on the motion of said Walden, the demise aforesaid was amended by inserting a new one of 50 years instead of 10, which has been inserted in the original declaration without the knowledge of or notice to either Craig or Shockey, as your petitioner is informed and believes, or any other person interested in said land; and said ex parte order was not discovered until after the term at which it was made was over.

Your petitioner is advised that said order was surreptitiously obtained and improvidently made, for errors in fact, even waiving the impropriety of bringing into life a judgment in ejectment perfectly dead for upwards of twenty years, and that for the following facts and reasons, to wit:

1st. After the expiration of the demise in said Walden's declaration, and before the removal thereof, your petitioner is advised that said Shockey sold the land in contest to Robert Pogue, who claimed it previously under the patent, in the name of Tibbs & Co., for 10,000 acres of land, posterior in date to that of said Walden, and adverse thereto; and said Pogue, who purchased in order to unite the conflicting claims in himself, then took possession of said land in contest, and continued possession in himself until about the year 1814, when he sold the same to Tilton and Houston, who held the possession for two or three years, and then sold to Gilson Hambrick, who continued in possession until the demise was extended, and until he sold and delivered possession to your petitioner, which was in the year 1831 or 1832; at the date of the extension of the demise aforesaid, viz., the 8th of May, 1824, the said Hambrick claimed and owned the land in contest, and was in fact the terre-tenant; and the said Hambrick had no notice or knowledge whatever of said extension, but the whole proceedings as to him was ex parte, nor did your petitioner have any knowledge whatever that said demise had been extended; at or before the date of his purchase aforesaid, the said Lewis Craig was not a terre-tenant, but enter-

ed a defendant with Shockey on account of having sold to him the land in contest; your petitioner is advised that, under this state of facts, his redress is by motion to reverse and annul said order renewing the demise, and he accordingly prays for such relief, as well as for such other redress, as his case requires; and as in duty bound, &c.

THOMAS BLAIR.

The said Blair assigns the following errors, which he saith hath intervened in the record and proceedings to his prejudice, in this, viz:

1st. The land in question had been possessed adversely for upwards of twenty years after the first demise had expired, and previous to the order enlarging it, and no extension or renewal of the same ought to have taken place.

2nd. No renewal of the demise ought to have taken place without notice to Lewis Craig and Abraham Shockey, the one the landlord, and the other the terre-tenant, when the suit was commenced.

3d. It was irregular to renew the demise after it had expired, without notice to Hambrick, the terre-tenant, at the date of the extension of the demise.

4th. The whole proceeding was irregular, collusive, and void, and ought not to have been granted.

MOREHEAD & BROWN.

And upon filing said petition, the said Blair, by his counsel, moved the court for a rule on the defendant, Walden, to show cause why the order extending the demise in the declaration described and set forth in the petition should not be set aside.

Whereupon the defendant to the petition, by attorney, entered his appearance to said rule, and the arguments of counsel being heard in part only, the same is laid over.

And afterwards, to wit, on the next day, to wit, the 9th of May, the court being now sufficiently advised of and concerning the plaintiff's motion, do consider that the defendant show cause, on or before the 6th day of the next term, why the order made at the May term of this court, in the year 1824, extending the demise in the declaration of John Den, on the demise of Ambrose Walden, vs. Lewis Craig and Abraham Shockey, should not be set aside and annulled.

And afterwards, to wit, on the 30th day of May, 1835, the following habere facias was issued herein, to wit:

JOHN DEN, on demise of Ambrose Walden, plaintiff,
against
LEWIS CRAIG and Abraham Shockey, defendants.

Execution dated May 30th, 1835.

His term, yet to come, of and in four dwelling houses, twenty outhouses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate and being on the waters of

Johnston fork of Licking, in the county of Mason, in the district aforesaid.

The marshal will not deliver to the plaintiff, upon this execution, any land outside of the locator's part, nor any land within which is enjoined by the order of December 2d, 1834.

This execution was made returnable to 1st Monday in August, 1835, and delivered to Walden, but never returned to the office.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1836, the following order was made:

THOMAS BLAIR, plaintiff,
vs.
AMBROSE WALDEN, defendant.

The evidence having been heard, and this motion having been argued on a former day of the court, and the court being now sufficiently advised of and concerning the premises, and the judges being divided in opinion, it is considered by the court that said motion be overruled, and that the defendant recover of the plaintiff his costs expended in this motion.

And afterwards, to wit, on the 18th day of November, in the year 1836, the following habere facias was issued, to wit:

JOHN DEN on the demise of Ambrose Walden,
against
ABRAHAM SHOCKEY, LEWIS CRAIG, the other defendant having departed this life.
} Execution dated 18th Nov., 1836.

His term yet to come, [of] and in four dwelling houses, 20 out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

The marshal will deliver only so much of the land to the plaintiff in this writ as lies within the following boundary: beginning, at a stake six feet north of a white oak tree, corner of Walden, as last surveyed, represented at 8 on the connected plat, and running thence with that line S. 37° 25′ E., 297 poles, to a stake in a line of Walden's original survey, in Tibb's lane at F; thence with line S. 20° west, 288 poles, to a stake in a lane at the intersection of the decreed line, 82 poles, N. 20° E, from said Walden's original corner near Proctors', at G; thence with the decreed line S. 52° 35′ W., 95 poles, to a stake in another of said Walden's old lines in cleared land at W; thence with the old line N. 70° W., 220 poles, to a stake i, in another of the decreed lines; thence with that line N. 37° 251 W., 273 poles, to two buckeyes and sugar tree at 7; and thence N. 53° 35″ E., 461 poles and 21 links, to the beginning; containing by survey 1144 acres, 2 roods, and 22 poles.

This execution was made returnable to February rules, 1837, delivered to John Walden, and never returned.

And afterwards, to wit, on the 19th day of November, being at the November term, 1836, came the parties by their attorneys, and the defendant, by his attorney, moves the court to quash the execution issued in this cause, on the following grounds:

1st. That there is no legal or valid judgment upon which the execution could regularly issue.

2d. That the judgment, such as it is, was rendered more than 20 years ago, and it was irregular and illegal to issue any execution on it, without a sciere facias first sued out against the defendant, &c.; L. Craig is dead, and no execution could regularly issue against the survivor, until revived.

3d. There is no judgment upon which, without a revival by sciere facias any execution could regularly and legally issue.

4th. That the execution irregularly and illegally issued on a judgment inoperative, and which from lapse of time gave no right to the clerk, without being revived, to issue the execution, or any other.

And the arguments of counsel being heard, but the court not being advised, took time, &c.

And afterwards, at a subsequent day of the term, to wit, on the 21st day of November, the court being sufficiently advised of and concerning the defendant's motion to quash the execution in this case, do consider that the habere facias which issued in the case on the 18th November inst., be, and the same is hereby quashed, and that the defendants in said execution recover of the lessor of the plaintiff, Ambrose Walden, their costs herein expended.

On the trial of this motion the following bill of exceptions was tendered to the court, signed, and ordered to be entered, which is as follows, to wit:

Be it remembered, that on the above motion being made in court by the counsel for the plaintiff therein, the counsel for Walden objected to the said motion being made, and to their being then received or heard by the court, on the following grounds:

1st. Because there had been no notice given to the said Walden, his agent, or attorney.

2d. Because the court having, on the day before the making of the motion, disposed of all the business before it, mentioned on the adjournment that the court would meet next day for the purpose of hearing read, and signing the orders, and the circuit judge had accordingly left, and was not then on the bench.

On the hearing of these objections, it appeared on the first ground that the counsel of Walden had, before the issuing of said execution, suggested the death of the said Craig, and caused the same to be recited in the execution, and his death was in no wise controverted by either party. And on the other ground of objection, it appeared that the clerk had, on the dissolution of the injunction on the day of the present term, by which the said Walden had been enjoined from suing out execution on the judgment in ejectment, informed the counsel of Walden that he would refuse to issue a writ of habere facias, unless he was or-

dered or instructed to do so by the court, and requested him to make his motion for that purpose within the term; but that he had afterwards, upon receiving a bond of indemnity from the agent of Walden, and three days before the making these motions, informed the counsel of both parties that he would in consequence thereof issue the executions.

That, before the adjournment of the court on the day before the motion was made, when the business was disposed of, it was mentioned from the bench that the court would adjourn to meet next day, to hear and sign the orders; upon which the counsel of Walden inquired whether any other business would be done; to which the district judge, who it was understood would alone constitute the court next day, answered that he hoped not; to which the counsel of the plaintiff in these motions answered, that he did not know that he would have any business, but that if he should have any motion to make, he would certainly make it; upon which the court adjourned to the usual hour next day.

It appeared from the statement of the counsel of the plaintiff in the motion, whose clients had not attended, and were absent, that he had understood, when it was said the bond of indemnity was given, that the clerk intended to issue, and the counsel or agent of Walden intended to take out, the execution. Yet he did not know or believe, until in the night after the adjournment of the court, on the day before the making of the motion, that the execution had issued; and that he then informed the counsel of Walden, that he would on the next day make the motion in court. On the above state of case, the court was of opinion, on the first ground, that no other notice of the motion was necessary. And on the second ground of objection, the court was of opinion that it did not appear that the counsel of the plaintiff in the motion had sought this occasion, when the court was constituted of the district judge only, to make said motion, and that the apparent necessity for the hearing thereof by the court when not full was not caused by him, either intentionally or otherwise.

And thereupon the court overruled the objections of the counsel of Walden to the court receiving and hearing said motion, and decided that the motion might proceed.

On the hearing of the motion, the records, orders, and proceedings in the actions of ejectment in this suit, and of the suits in chancery, and the several bills filed therein, and orders and decrees made in the several cases of Bodley, &c., vs. Walden, and the order in this case extending the demise in the declaration, and the record of the case of the rule obtained and motions made in said action of ejectment to have the said order, allowing the said demise to be extended, quashed and set aside; and the proceedings and orders of the court, in said rule and motion, were altogether with the record of the habere facias which this motion was made to have quashed, referred to, and given in evidence, and made part hereof, so that the whole may appear in any transcript of the record of this motion which may be made for the purpose of a writ of error, or any other purpose.

On the above matter appearing in the record, and the fact of the

death of the said Lewis Craig before the issuing of the said writ of habere facias, which was admitted by the parties, the court, on the grounds filed, and constituting a part of the record of this case, sustained the said motion, and quashed and set aside said writ of habere facias.

To which several decisions of the court above stated the counsel of Walden excepted, and prays that this, his bill of exceptions, may be signed, sealed, and enrolled; and the same is allowed.

THOS. B. MONROE. [L. S.]

And afterwards, to wit, on the 9th day of November, 1840, came Doe, on dem. Walden, vs. Shockey & Craig, by attorney, into the court aforesaid, and filed the following petition, to wit:

DOE, on dem. Walden,
agt.
SHOCKEY & CRAIG.

To the judge of the circuit court of the United States:

John Doe, on the demise of Ambrose Walden, by Robert Wickliff, his attorney, represents, that since the suing out of the writ of scire facias in this case, and whilst the cause was depending before the supreme court, the demise in the declaration has again expired, whereby he cannot have judgment for execution, &c. He therefore prays the court to extend the demise to one hundred years, or any other period *when* the court in its reason, may deem correct and proper; and he will pray, &c.

R. WICKLIFF,
Attorney for the plaintiff.

And on the same day the court made the following order, to wit:

JOHN DOE, on demise of Ambrose Walden, plaintiff,
against
LEWIS CRAIG'S heirs & ABRAHAM SHOCKEY, defts. } In ejectment.

This day came the plaintiff, by his attorney, and, on his motion, it is ordered that John Bing and Catharine Bing, his wife, John Craig, William Craig, Francis Baker, Thomas Trueman and Sarah Trueman, his wife, David Childs, John Childs, Ann Seward, Maria Seward, Elizabeth Seward, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, Maccoy Craig, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of Lewis Craig, one of the original defendants, and Abraham Shockey, the other original defendant, and Benjamin Umpstead, Thomas Blair, and Nicholas Proctor, the tenants now in possession of the land for which the judgment in ejectment was rendered, shew cause here, on the second day of the next term of this court, why the demise in the plaintiff's declaration in ejectment shall not be extended to one hundred years. And it is ordered that a copy hereof be served upon the said heirs of Lewis Craig, Abraham Shockey, Benjamin Umpstead, Thomas Blair, Nicholas Proctor, and on such other persons, if any, as may be found in possession of the land, or any part thereof.

And upon a copy of the above rule the marshal made the following return:

Executed, prior to December 25th, on Lewis Craig, Will. Craig, Elizabeth Kemp, Jame, Melvina, and Polly Craig, Cath. King, (Bing,) Francis Barker, John McKay and Frances, his wife, late Craig, David and John Childs, Ann, Maria, and Elizabeth Seward, John H. Craig, John N. Proctor, Thomas Blair, and Benjamin Umpstead. The other defendants not found; the most, if not all of them, are no[t] inhabitants, as I am informed, or dead.

JOHN M. McCALLA, *M. K. D.*

And afterwards, to wit, at the May term of the court aforesaid, in the year 1841, came the plaintiff's attorney, and the defendants in the above motion, by their attorney, entered their appearance.

Whereupon the motions came on to be heard, but the court not being advised, took time, &c.

And afterwards, to wit, at the November term of the court aforesaid, in the year aforesaid, the following order was made herein, to wit: The court being now sufficiently advised, do consider that the said motion to extend the demise in the declaration be overruled.

A copy—attest: JNO. H. HANNA, *C. C. C. K. D.*

The record of the ejectment suit of A. Walden against Craig & Rose, is as follows, viz:

Copy record —A. Walden against L. Craig and J. Rose.

Pleas before the honorable Harry Innis, judge of the district court of the United States of America, in and for the Kentucky district, holden at the capitol, in the town of Frankfort, on the 19th day of June, in the year A. D. 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, holden in and for the Kentucky district in the month of March, in the year of our Lord 1797, came John Den, lessee of Ambrose Walden, by his attorney, and filed the following declaration in ejectment, to wit:

KENTUCKY DISTRICT, *to wit:*

John Den complains of Richard Fen, in custody, &c., for that, to wit, whereas Ambrose Walden, on the 15th day of August, in the year of our Lord 1789, in Mason county, in Kentucky district aforesaid, had devised and granted, and to farm let to the said John Den, four dwelling-houses, twenty out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in Mason county aforesaid; to have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the date of the said lease unto the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenement, with the appurtenances, and was thereof possessed until the said Richard Fen

afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, *his said farm*, his said term not being yet ended, and kept out, and still keeps out the said John Den, so ejected, drove out, and amoved from his said possession; and then and there did other injuries to him, against the peace, and to the damage of the said John Den sixty dollars; and, therefore, he brings suit, &c.

WM. CLARK, *for plaintiff.*
JOHN DOE.
RICHARD ROE,
Pledges, &c.

I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in the action as casual ejector, and having no claim or title to the said premises, do advise you to appear on the first day of next March term, in the court of the United States for the district aforesaid, by some attorney of that court, and then and there, by a rule of the said court, cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession. Your loving friend,

RICHARD FEN.

BOURBON COUNTY, *sct:*

On the 22d day of February, 1797, came Thomas McGlanton before me, the subscriber, one of the justices of the peace for said county, and made oath that, on the 17th day of this present month, February, he did deliver a copy of the foregoing declaration and notice on the premises in the foregoing declaration mentioned, unto Jonathan Rose, he being tenant in possession of part of the premises in said declaration mentioned; and that he also, on said day, did deliver another copy of the said declaration and notice to the wife of Charles Rutter, one other tenant in possession of other parts of the premises in the said declaration mentioned; and also, on the same day, did deliver a copy of the said declaration and notice to the wife of William Allen, one other tenant in possession of another part of the premises in the said declaration of ejectment mentioned. And this deponent further saith, that he told them all, severally, that it was a declaration in ejectment, and, unless they did appear by some attorney of the court of the United States for said district the next ensuing term, there would be judgment thereupon against the defendant by default, and they would be turned out of possession, or words to that effect. WILL. NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made herein, to wit:

It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and

having failed to appear and plead to the plaintiff's said action, it is, therefore, ordered by the court, that the said defendants appear here on the first day of the next term of this court, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto; or, on failure thereof, (they severally having notice of this order,) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiffs.

And afterwards, to wit, at the March term, in the year 1798, the following order was made herein, viz: On motion, it is ordered by the court, and by the assent of the parties, that Lewis Craig, together with the defendant, Jonathan Rose, be made defendants to this suit instead of the casual ejector, Richard Fen, and that he will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein supposed, and plead thereto not guilty, and agree to insist upon the title only at the trial.

And it is further ordered, that if, upon the trial of the issue, a verdict should be given for the defendants, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself doth not pay them.

Whereupon the said defendants, by *his* attorney, confess the lease, entry, and ouster in the declaration supposed, and agrees to insist upon the title only at the trial; and the said defendants come and defend the force and injury, when and where, &c., and say they are in no wise guilty of the trespass and ejectment, in manner and form as the plaintiff hath against them complained, and of this he puts himself upon the country, and the plaintiff doth so likewise; therefore, let a jury come, &c.

And it is further ordered, that Miles W. Conway do go on the land in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there lay off and survey the same as either party may direct, having regard to all deeds and other evidence, report all matters of fact specially, and return four fair plats and certificates into the clerk's office of this court before the day of hearing, and the sheriff of Mason county is directed to attend the said surveyor to remove force, should any be offered; and further proceedings are continued until the next court.

And afterwards, to wit, at the June term of the court aforesaid, to wit, the 19th day of June, in the year of our Lord 1800, (until which time this cause was continued,) the following special case was submitted to the court by the consent of the parties herein, to wit:

The tract of land marked on the plat by the letters A, B, C, D, was duly granted to the said Walden, lessor of the plaintiff, by patent from the Commonwealth of Virginia, bearing date the 21st day of November, 1786.

The said Walden and Simon Kenton executed the agreement A, respecting the locating of said lands; the said agreement is made a part

of this case. The defendants are in possession of that part of the tract marked on the plat by the letters E, F, G, C, and claim the said part of the said tract of land under the said agreement A, and the endorsement thereon, and a division thereof, made as certified by the report B; which report, and endorsement on said agreement, is also made a part of this case. If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land, marked on the plat as aforesaid by the letters E, F, G, C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendant.

WM. CLARK, *attorney for plaintiff.*
THOS. TODD, *attorney for defts.*

The court having fully considered and understood the said case, is of opinion that the legal title to the said part of the said tract of land, marked on the plat E, F, G, C, is in the plaintiff, and was on the day of filing the declaration in said suit.

It is therefore considered by the court that the plaintiff recover against the said defendants, Lewis Craig and Jonathan Rose, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendant in mercy, &c.

And on motion of the plaintiff, by his attorney, the United States writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of the term aforesaid, returnable to the next court. The following are the exhibits made a part of the agreed case:

MASON COUNTY, *to wit:*

We, the commissioners appointed by the worshipful the court of Mason aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth, and non-residents, and being called on to divide a tract of land containing one thousand three hundred and thirty-three acres, patented in the name of Ambrose Walden, between him, the said Ambrose, and Lewis Craig, assignee of Craig and Johnson, and assignee of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig as aforesaid, proceeded this day to divide the same in the said proportions, that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows: Beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence north 22 east with the old line, 155 poles, to two white ashes and sugar tree; thence north 61° W., 329 poles, to a walnut and two red oaks in Johnson's line; thence S. 51 west with Johnson's line, 168 poles, to three white oaks in John Walden's line; thence to the beginning, containing 320 acres. To have and to hold the said quantity of 320 acres to him, the said Lewis Craig, his heirs and assigns, forever, free and clear from the let [or] molestation of him,

the said Ambrose Walden, his heirs, &c., forever, and to hold to him, the said Lewis Craig, his heirs, &c., in severalty, and no longer, subject to the claim of him, the said Walden; also divided the said tract of land as follows, to wit: Beginning at two white ashes and sugar tree, in John Walden's line, and corner to Lewis Craig; thence N. 22 E., 375 poles, to a red oak and honey locust; thence N. 68 W., 260 poles, to a white oak and box elder in Jacob Johnson's line; thence with said line S. 39 east, 112 poles, to two buckeyes and white oak, east corner to the said Johnson; thence S. 51 W., 340 poles, to a walnut and two red oaks, corner to Lewis Craig; thence S. 61 E., 329 poles, to the beginning. To have and to hold the said tract of land, containing 640 acres, to him, the said Ambrose Walden, and his heirs, &c., forever, in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns, forever. And we, the said commissioners, do certify and declare, that the residue of the said survey, in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is, on that account, left in tenancy in common between the said Ambrose Walden and the said Lewis Craig, and subject to a future division as the event of said interference may justify.

In witness whereof we, the said commissioners, have hereunto set our hands and affixed our seals, this 10th day of February, 1794.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered before—

MASON COUNTY, *sct:*

April court, 1797. This division of lands between Walden and Craig was returned by the commissioners, and ordered to be recorded.

Test: THOS. MARSHALL, Jr., *M. C.*

Articles of agreement made and done this 1st day of May, 1780, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Caroline county, Virginia, witnesseth: That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden, in the district of Kentucky, in consideration of which the said Ambrose Walden doth bind himself, his heirs, and assigns, to convey a proper deed of one-third of the said 10,000 acres so located, unto the said Simon Kenton, respect being held to quality and other local advantages; and, lastly, both parties bind themselves to the performance of the premises, under the penalty of fifty thousand pounds.

his
SIMON X KENTON, [SEAL.]
mark.
AMBROSE WALDEN. [SEAL.]

Signed, sealed, and delivered in presence of—
AGNUS CAMERON,
JOSEPH CATRITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest of the within article to John Craig and Robert Johnson, this 24th day of April, 1787.

SIMON KENTON. [SEAL.]

WILSON TURNER,
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May the 18th, 1791.

ROBERT JOHNSON.

TOLIVER CRAIG.

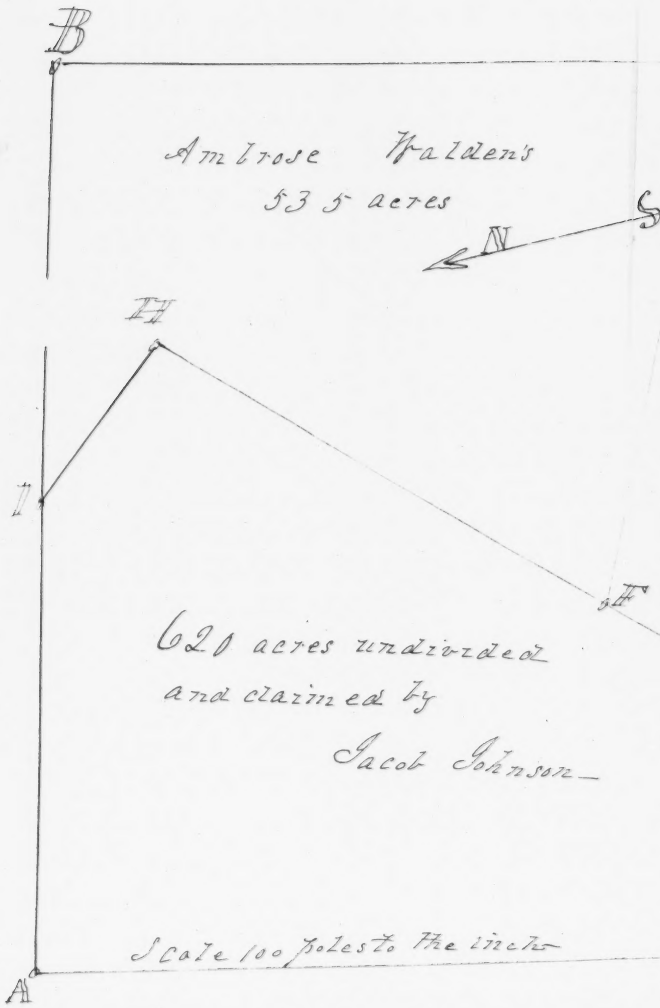
We assign to Lewis Craig the third part of the three thousand acre entry in the name of John Taylor, and one-third of one thousand five hundred acres in the name of William Nelson; John Craig's interest is only given up. Dec. the 28th, 1793.

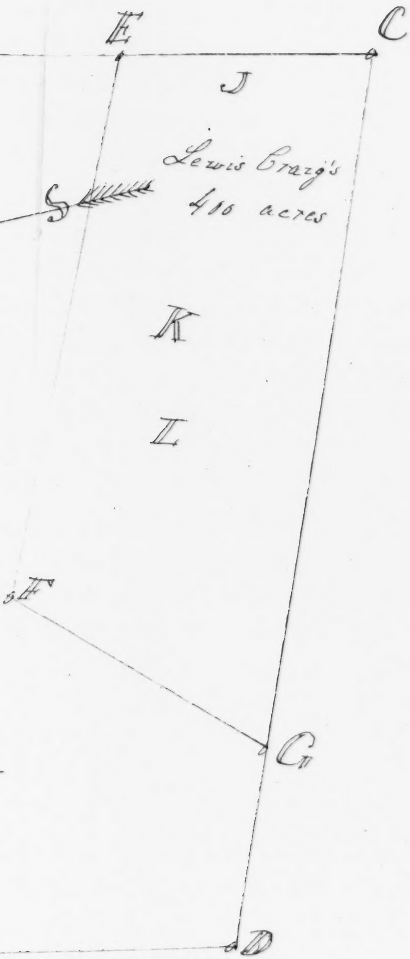
ROBERT JOHNSON, *Trustee to Jno. Craig.*
ELIJAH CRAIG, *Trustee to Jno. Craig.*

[For plat see original.]

The whole of this land is now claimed and contended for by Thomas Bodley and James Hughes.

February 10th, 1794. Surveyed for Ambrose Walden, one thousand five hundred and fifty-five acres of land, situate in Mason county, on the waters of Johnson's fork of Licking, and bounded as follows, to wit: Beginning at A, a buckeye and hoop ash stump, shewn for said Walden's most northwestwardly corner; thence S. 68° E., 520 poles, to B, two red oaks and honey locust; thence S. 22° W., 530 poles, to C, an ash, Spanish oak, mulberry, and buckeye, corner to John Walden's survey; thence with his line N. 61° W., 524 poles, to D, a hickory, red oak, and white oak; thence N. 22° E., 424 poles, to the beginning. Also divided the above lands as follows, to wit: Beginning at 1, an ash, Spanish oak, mulberry, and buckeye; thence N. 22° east, with John Walden's line, 155 poles, to E, two white ashes and sugar tree, corner to Ambrose Walden's land; thence N. 61° W., 329 poles, to F, a walnut and two red oaks in Jacob Johnson's line; thence with the same S. 57° W., 168 poles, to G, three white oaks in John Walden's line; thence with the same S. 61° east, to the beginning, at C, including 400 acres for Lewis Craig, as his equal third part in quality, of that part of Ambrose Walden's survey of 1,333 acres by patent, that is not included by Jacob Johnson's survey, surveyed as the commissioners of Mason county allotted and directed. Also divided the above land as follows, to wit: Beginning at E, two white oaks and sugar tree, corner to Lewis Craig's 400 acres; thence N. 22° E., 375 poles, to B, a red oak and honey locust; thence N. 68° W., 260 poles, to I, a white oak and box elder in said Johnson's line; thence with the same


B
Ambrose Walden's
535 acres
N
S
H
I
F
620 acres undivided
and claimed by
Jacob Johnson
Scale 100 poles to the inch
A


E
C
J
Lewis Craig's
410 acres
K
L
F
G
D

S. 39° E., 112 poles, to H, two buckeyes and white oak, corner to said Johnson; thence with his line S. 51° E., 340 poles, to F, a walnut and two red oaks, corner to said Craig; thence S. 61° east, with his line, to the beginning at E, including 535 acres, for the said Ambrose Walden, as his equal two-thirds in quality, all that part of said Walden's survey of 1,333 acres, by patent, that is not included in Jacob Johnson's survey, surveyed as the commissioners of Mason county allotted and directed; and the remaining 620 acres, known in the plat by the letters A, I, H, G, D, is that part of said Walden's survey of 1,333 acres that is claimed by a survey of Jacob Johnson, and left undivided by the said commissioners.

WHITF'D CRAIG, *D. S. M. C.*

N. B.—The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Rose, and marked on the plat thus, J; also sold to William Allen, and marked on the plat thus, K; also sold to Mr. Rector, and marked on the plat thus, L. The said Rose, Allen, and Rector, are living on the 400 acres in plat marked Lewis Craig, and nearly as the letters point out. Surveyed by me,

WHTF'D CRAIG.

And afterwards, to wit, on the 4th day of August, A. D. 1800, the following habere facias was issued on the foregoing judgment, to wit:

[L. S.] United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States, for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and Jonathan Rose, his term yet to come, of and in four dwelling houses, 20 out-houses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Lickin, in the county of Mason, and district aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years, from thence next ensuing, and fully to be complete and ended. By virtue of which said demise, the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Lewis Craig and Jonathan Rose afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, the said term not being yet ended, and kept out, and still keeps out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Rose are convict, as appears to us of record. Therefore, we command you, that without delay you cause the said John Den to have his possession of his farm aforesaid, yet to come, of

and in the lands and tenements aforesaid, with the appurtenances, and how you shall execute this our writ make appear on the third Monday in November next, before the judge of our district court, at the Capitol, in the town of Frankfort, and have you then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereto affixed, the 4th day of August, 1800, and of our independence the twenty-fifth.

Teste: THOMAS TUNSTALL, *C. K. D. C.*

The above habere facias was returned by A. Walden on the 5th day of September, 1811.

And on the 14th day of September, 1811, the above habere facias was renewed, delivered to A. Walden, and returned by him the 16th May, 1812

And on the 2d day of June, 1812, the following habere facias was issued, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States, for the Kentucky district, by the judgment of the said court, hath recovered against Lewis Craig and Jonathan Rose, his term yet to come of and in 4 dwelling houses, 20 out-houses, 15 acres of meadow, 100 acres of arable and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the 15th day of August, in the year of our Lord 1787, until the full end and term of ten years, from thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said John entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Rose afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered into the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved from his said farm, his said term being not yet ended, and kept out, and still doth keep out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Rose are convict, as appears to us of record. Therefore, we command you, without delay, you cause the said John Den to have possession of his farm aforesaid, his term yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall have executed this writ you make appear on the first Monday in August next, before the judge of our said district court, at the Capitol, in the town of Frankfort, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 2d day of June, A. D. 1812, and of our independence the 36th.

Attest: JOHN H. HANNA, *C. K. D. C.*

Marshal's return, to wit:

Stayed by supersedeas; 62 miles travelling.

JOHN A. MITCHELL, *Deputy.*
For ROBERT CROCKETT, *M. K. D.*

And afterwards, to wit, on the 8th day of June, 1812, came Craig and Rose, and filed the following petition and order for supersedeas, to wit:

Petition of Craig and Rose.

To the honorable the judges of the circuit court *of the circuit court* of the United States, for the 7th circuit, for the district of Kentucky, respectfully sheweth:

Your petitioners, Lewis Craig and Jonathan Rose, that at the June term, 1800, a judgment in ejectment was entered against them in the circuit court of the United States, for the Kentucky district, in an action of ejectment brought by the lessee of Ambrose Walden, for 4 dwelling houses, &c., on which, since the last term of the court, an habere facias possessionem has been issued against them. Your petitioners are advised, that the issuing of the said habere facias is both irregular and illegal, and they are furnished by their counsel with the following assignment of errors:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811. No execution ought to have issued after a lapse of a year after the entry of judgment, without a sciere facias. Rem. on ejectment, 142.

2dly. The term had expired before the entry of judgment, of course the judgment itself is impeachable, but is sufficient for the petitioners that no habere facias can be legally issued when the term has expired. Rem. on ejectment, 146–'7, 283, 122.

Your petitioners therefore pray a supersedeas may issue, &c., &c.

J. HUGHES,
For Craig and Rose.

UNITED STATES OF AMERICA, *Kentucky district, sct:*

Order for supersedeas.

Issue a supersedeas agreeably to the prayer of the foregoing petition, taking bond and security according to law.

Witness my hand, a judge of the said district, this 6th day of June, 1812.

HARRY INNIS.

To JOHN H. HANNA, *Clerk U. S. C. C., &c., &c.*

Injunction bond.

Know all men by these presents, that we, Lewis Craig, Jonathan Rose, and Thomas Bodley, all of the State of Kentucky, are held and firmly bound unto Ambrose Walden, of the State of Virginia, in the sum

of one thousand dollars; to the payment of which, well and truly to be made to the said Walden, his heirs, executors, and assignees, we bind ourselves, our heirs, executors, and administrators, jointly, and severally, firmly by these presents. Sealed with our seals, and dated this 8th day of June, A. D. 1812.

The condition of the above obligation is such, that whereas the above bound Lewis Craig and Jonathan Rose have this day obtained a writ of supersedeas to stay all further proceedings on a writ of habere facias, which issued from the clerk's office of the district court of the United States, in and for the Kentucky district, on the 2d day of June, A. D. 1812, wherein John Den, lessee of the above named Ambrose Walden, is plaintiff, and the above bound Lewis Craig and Jonathan Rose are defendants, for the possession of 4 dwellings, 20 out-houses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid. Now, if the said Craig and Rose shall prosecute the said supersedeas with effect, or, in case of failure thereof, the said Craig, Rose, and Bodley shall well and truly pay, or cause to be paid, all such damages and costs as may be awarded against the said Craig and Rose, in case the proceedings aforesaid shall be affirmed, then the above obligation to be void, else to remain in full force and virtue.

THOMAS BODLEY, [SEAL.]
Witness: By JAMES HUGHES, [SEAL.]
SAML. J. M. MAGIR, *his attorney in fact.* [SEAL.]

The words "the above bound," interlined between the 19th and 20th lines before signed.

Supersedeas.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are commanded from all further proceedings on the habere facias, issued from the office of the district court of the United States, in and for the Kentucky district, on a judgment in that court, wherein John lessee of Ambrose Walden, is plaintiff, and Lewis Craig and Jonathan Rose are defendants, which habere facias, issued on the 2d day of June, A. D. 1812, against the said Lewis Craig and Jonathan Rose, for the possession of 4 dwelling houses, 20 out-houses, 15 acres [of] meadow, 100 acres *acres* of arable, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, and district you altogether supersede; which habere facias before the judges of our 7th circuit court of the United States, in and for the Kentucky district, is brought to be corrected on the petition of the said Lewis Craig and Jonathan Rose, who hath given bond and security to prosecute with effect, and if the proceedings aforesaid should be affirmed, to satisfy and pay all such damages and costs as shall be awarded against them. We command

you to give notice to the said Ambrose Walden, that he be before the judges of our 7th circuit court at the Capitol, in the town of Frankfort, on the first Monday in November next, to show cause why the said habere facias should not be quashed, and have then there this writ.

Witness John Marshall, esq., chief justice of the said United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return.

Executed 17th June, 1812; 62 miles travelling.

JOHN A. MITCHELL, *deputy for*
ROBERT CROCKETT, *M. K. D.*

And afterwards, to wit, at the May term of the 7th circuit court aforesaid, *aforesaid*, in the year 1813, the following order was made herein, to wit:

The court being now sufficiently advised of and concerning the premises, do order that the executions issued herein be quashed, they having been issued after the demise in the declaration, and that the said plaintiff recover against the lessor of the defendant their costs in this behalf expended.

And afterwards, to wit, at the July term of the court aforesaid, to wit, on the 5th day of August, 1817, the following order was made herein, to wit: This day came the plaintiff in the above suit, and moved the court for a rule on the defendants aforesaid, to shew cause on the 6th day of the next term of this court, why the demise in the declaration should not be extended. And on the 22d day of May, 1819, the following habere facias was issued herein, to wit:

WALDEN'S lessee,
against
CRAIG AND ROSE. *Dated 22d May*, 1819.

His term yet to come, and unexpired, of, in, and to 4 dwelling houses, 20 out-houses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, situate, lying, and being in the county of Mason, on the waters of Johnson's fork of Licking, in the district of Kentucky. This execution was made returnable to the July rules following, but was not taken out of the office.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1821, until which time this cause was continued, the following entry was made, to wit:

JOHN DEN, on dem. Ambrose Walden, plaintiff,
against
LEWIS CRAIG and Jonathan Rose, defendants. } In ejectment.

Upon a motion to extend the demise laid in the declaration, the court being advised, do order that said motion be overruled.

Be it remembered, that on this motion Walden, to support his motion, produced and read to the court the declarations, proceedings, and

judgment in an action of ejectment brought in this court by the said Walden, in the name of his lessee, John Den, against said Rose, &c., in which judgment was obtained at the June term, 1800, of the district court, for the district of Kentucky, having the jurisdiction of a circuit court; which declaration, proceedings, and judgment are made part of this bill of exceptions; and also produced and read to the court, the bill, answer, decree, and other proceedings in a suit in chancery, brought in the said district court, in the name of Thomas Bodley, &c., against said Ambrose Walden, and which decree was rendered at their May term, 1809. The said Walden also, by his counsel, produced and read to this court, the bill, answer, proceedings, and decree in another suit in chancery, commenced in this court, in the name of Thomas Bodley, &c., against said Walden, which suit was discontinued at the April rules, in the year 1813. He also produced and read the habere facias possessionem issued on said judgment and ejectment, and the proceedings and judgment of said court quashing the same. Whereupon the said Walden, upon the whole case, and upon a rule of this court, vs. Craig and Rose, to shew cause, &c., which was served upon said Craig and Rose, as will appear by the record of this motion, moved the court for leave to amend and extend the demise laid in the declaration and ejectment, because the same had expired during the pendency of said proceedings, as appeared by the orders, decrees, and proceedings in the said suits in chancery; but the court being divided in opinion, refused to give leave to amend, and overruled said motion. To which opinion of the court the said Walden by his counsel excepts, and prays his bill of exceptions to be signed, sealed, &c.

Memo. The opinion and decision in this cause was delivered when the court was full, but the bill of exceptions not being prepared by the counsel of the plaintiff until one judge returned home for the term, the exceptions can be signed by one judge only. The several records herein referred to being records and proceedings in this court, are ordered to be certified as a part of this bill of exceptions without entering them on the order book.

THOMAS TODD. [SEAL.]

And afterwards, to wit, at the May term of the court aforesaid, in the year 1824, (until which time the motion to extend the demise with declaration was continued,) the following order was made herein, to wit:

JOHN DEN, on dem. AMBROSE WALDEN, plff.,
against
LEWIS CRAIG & JONATHAN ROSE, dfts.
} In ejectment.

On motion of the plaintiff in this cause, by his attorney, leave is given to amend the decree by extending the demise to fifty years, which is done accordingly, but execution not to go out before the first day of March next.

Petition of John Proctor.

And afterwards, to wit, on the 8th day of May, 1835, came John Proctor, into the court aforesaid, and filed the following petition, to wit:

To the honorable the judges of the United States *circuit*, for the 7th circuit and Kentucky district: Your petitioner, John N. Proctor, humbly represents, that in the year 1797 a certain Ambrose Walden, on the demise of Den, instituted an action of ejectment in the district court of this district, against Fen, as casual *Fen as casual* ejector, and during the following year Lewis Craig and Jonathan Rose were admitted to defend said suit; and at the June term, 1800, a judgment was rendered in favor of said Walden for the land then in possession of Rose, the tenant in possession, but no writ of possession has ever been executed on said judgment; that the demise in said declaration was laid at ten years from the 15th day of August, 1789, and of course expired the 15th day of August, 1799, and remained dead and inoperative for about twenty-five years; by which lapse of time, your petitioner is advised, the possession referred into a complete legal estate; but at the May term, 1824, of your honorable court, on motion of the said Walden, the demise aforesaid was amended by inserting a new one of fifty years instead of ten, which has been inserted in the original declaration without the knowledge of, notice to, either Craig or Rose, as your petitioner is informed and believes, or any other person interested in said land, and said ex parte order was not discovered until after the term was over. Your petitioner is advised that said order was surreptitously obtained and improvidently made, for errors in fact, even waiving the impropriety of bringing into life a judgment in ejectment perfectly dead for upwards of twenty years, and that for the following facts and reasons, viz: After the expiration of the demise in said Walden's declaration, viz., in the latter part of the year 1800, as your petitioner is advised, Rose, the tenant in possession of the land claimed by said Walden from Bodley and Pogue, who claimed under a patent in the name of Tibbs & Co., for 10,000 acres of land, posterior in date to that of said Walden, and adverse thereto, for which he held the bond of said Bodley and Pogue for 130 acres, which bond was satisfied by the execution of a deed September, 1821; and between the years 1814 and 1819, and whilst the said demise continued dead, your petitioner, about the year 1816 or 1817, said Rose sold by executory contract the said tract of land to his son, Jonathan H. Rose, and delivered the possession thereto to him, and the said Jonathan H. Rose continued on said land, and was in fact the terre-tenant at the date of the extension of the demise, viz., the 8th of May, 1824; and the said Jonathan H. had no notice or knowledge whatever of said extension, but the whole *proceed* proceedings as to him was ex parte; and your petitioner states, that during the year 1826 he purchased by bond of said Jonathan H. Rose, and took possession of said land in March, 1827, and shortly afterwards received a deed therefor from said Rose, without any knowledge upon his part of the extension of said demise, and when, as he is advised, the title of said Rose had referred into a complete legal title; the said Lewis Craig was not a terre-tenant, but was entered defendant with Rose on account of his sale to said Rose of the land in contest. Your petitioner is advised that under this state of facts his redress is by motion to amend and

reverse said order renewing the demise; and he prays for such relief, and for such other relief, as his and as in duty bound, &c.

JOHN N. PROCTOR.

The said Proctor saith, that manifest error hath intervened in the record and proceedings to his prejudice, in this, viz: 1st, the land in question had been possessed adversely for upwards of 20 years after the first demise had expired, and previous to the order enlarging it, and no extension or renewal of the same ought to have taken place. 2d, no renewal of the demise ought to have taken place without notice to Lewis Craig and Rose, the one the landlord and the other the terre-tenant, when the suit was brought. 3d, it was irregular to renew the demise after it had expired, without notice to Jonathan H. Rose, the terre-tenant. 4th, the whole proceeding was irregular, collusive, and void, and ought not to have been granted.

MOREHEAD & BROWN.

And upon the filing of the said petition the said Proctor moved the court for a rule on the defendant, to shew cause why the order extending the demise in the declaration described, and set forth in their petition, should not be set aside. Whereupon the defendant, by attorney, entered his appearance to said rule, and the argument of counsel being heard in part only, the same is laid over.

And afterwards, to wit, on the next day, to wit, the 9th of May, the court being now sufficiently advised of and concerning the plaintiff's motion, do consider that the defendant shew cause, on or before the next term, why the order made at the May term of this court, in the year 1824, extending the demise in the declaration of John Den, on demise Ambrose Walden, against Jonathan Rose and Lewis Craig, and John Doe, on demise said Walden, against Lewis Craig and Abraham Shockey, should not be set aside or annulled.

And afterwards, to wit, on the 30th day of May, 1835, the following habere facias was issued herein, to wit:

JOHN DEN, on demise AMBROSE WALDEN,
against
LEWIS CRAIG & JONATHAN ROSE.

Execution, dated 30th May, 1835.

His term yet to come of and in 4 dwelling houses, 20 out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of woodland, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid. The marshal will not deliver to the plaintiff, upon this execution, any land outside of the locator's part, nor any land within which is enjoined by the order of Dec. 2d, 1834.

This execution was made returnable to the first Monday in August, 1835, and delivered to Walden, but never returned to the office.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1836, the following order was made, to wit:

JOHN N. PROCTOR
against
AMBROSE WALDEN.

The evidence having been heard, and this motion having been argued on a former day of the court, and the court being now sufficiently advised of and concerning the premises, and the judges being divided in opinion, it is considered by the court that said motions be overruled, and that defendant recover of the plaintiffs his costs expended in these motions.

And afterwards, to wit, on the 18th day of Nov., 1836, the following habere facias was issued herein, to wit:

JOHN DEN, on the demise of Ambrose Walden,
against
JONATHAN ROSE, LEWIS CRAIG, the other defendant having departed this life.

Execution, dated 18th Nov., 1836.

His term yet to come of and in 4 dwelling houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

The marshal will deliver only so much of the land to the plaintiff in this suit as lies within the following boundary: Beginning at a stake six feet north of a white oak tree, corner of Walden, as last surveyed, represented at 8 on the connected plat, and running thence with that line S. 37° 25′ E., 297 poles, to a stake in a line of Walden's original survey in Tibb's lane at *f*; thence with that line S. 20° W., 288 poles, to a stake in a lane at the intersection of the decreed line, 82 poles, N. 20° E., from said Walden's original corner near Proctor's at G; thence with the decreed line S. 52° 35′ W., 95 poles, to a stake in another of said Walden's old lines, in cleared land at H; thence with the old line N. 70° W., 220 poles, to a stake I, in another of the decreed lines; thence with that line N. 37° 25′ W., 273 poles, to two buckeyes and sugar tree at 7; and thence N. 53° 35′ E., 461 poles and 21 links, to the beginning, containing by survey 1144 acres, 2 roods, and 22 poles.

This execution was made returnable to February rules, 1837, delivered to John Walden, and never returned.

And afterwards, to wit, at the Nov. term of the court aforesaid, to wit, the 19th Nov., 1836, the following order was made herein, to wit:

JOHN DEN, on the demise of Ambrose Walden, plaintiff,
against
JONATHAN ROSE, surviving defendant, with LEWIS CRAIG, defendant.

On motion [of] defendant to quash habere facias.

This day came the parties, by their attorneys, and the defendant,

by his attorney, moves the court to quash the execution issued in this cause, on the following grounds:

1. That there is no legal or valid judgment upon which the execution could regularly issue.

2. That the judgment, such as it [is,] was rendered more than 20 years ago, and it was irregular and illegal to issue any execution on it without sciere facias first sued out against the defendant, &c.; L. Craig is dead, and the execution could not regularly issue against the survivor without revival.

3. There is no judgment upon which, without a revival by sciere facias, any execution could regularly or legally issue.

4. That the execution irregularly and legally issued on a judgment in operation, and which, from lapse of time, gave no right to the clerk, without being revived, to issue the execution, or any other. And the arguments of counsel being heard, but the court not being advised, took time, &c.

And at a subsequent day of the term aforesaid, to wit, the 21st day of Nov., 1836, the court being now sufficiently advised of and concerning the defendant's motion to quash the execution in this case, do consider that the habere facias, which issued in this cause on the 18th Nov. inst., be, and the same is, quashed, and that the defendant in said execution above recited recover of the lessor of the plaintiff, Ambrose Walden, their costs herein expended.

And on the same day of the Nov'r term aforesaid, to wit, the 21st Nov'r, 1836, the following entry was made herein, to wit:

Be it remembered, that, on the above motion being made in court by the counsel of the plaintiff therein, the counsel for Walden objected to the said motion being made, and to their being then received or heard.

1st. Because there had been no notice given to the said Walden, his agent, or attorney.

2d. Because the court having, on the day before the making of the motions, disposed of all the business before it, mentioned on the adjournment that the court would meet next day for the purpose of hearing read, and signing, the orders; and the circuit judge had accordingly left, and was not there on the bench.

On the hearing of these objections, it appeared, on the first ground, that the counsel of Walden had, before the issuing of the said execution, suggested the death of the said Craig, and caused the same to be recited in the execution, and his death was in no wise controverted by either party.

And on the other ground of objection, it appeared that the clerk had, on the dissolution of the injunction, on the day of the present term, by which the said Walden had been enjoined from suing out execution on the judgment in ejectment, informed the counsel of Walden that he would refuse to issue a writ of habere facias unless he was ordered or instructed to do so by the court, and requested him to make his motion for that purpose within the term; but that he had afterwards,

upon receiving a bond of indemnity from the agent of Walden, and three days before the making these motions, informed the counsel of both parties that he would in consequence thereof issue the executions.

That before the adjournment of the court, on the day before the motion was made, when the business was disposed of, it was mentioned from the bench that the court would adjourn to meet next day to hear and sign the orders; upon which the counsel of Walden inquired whether any other business would be done; to which the district judge, who it was understood would alone constitute the court next day, answered, that he hoped not; to which the counsel of the plaintiff in these motions answered, that he did not know that he would have any business, but that if he should have any motion to make he would certainly make it; upon which the court adjourned to the usual hour next day.

It appeared, from the statement of the counsel of the plaintiff in the motion, whose clients had not attended, and were absent, that he had understood, when it was said the bond of indemnity was given, that the clerk intended to issue, and the counsel or agent of Walden intended to take out, the execution, yet he did not know or believe, until in the night after the adjournment of the court, on the day before the making of the motion, that the execution had issued, and that he then informed the counsel of Walden that he would, on the next day, make the motion in court. On the above state of case the court was of opinion, on the first ground, that no other notice of the motion was necessary.

And on the second ground of objection the court was of opinion that it did not appear that the counsel of the plaintiff in the motion had sought this occasion, when the court was constituted of the district judge only, to make said motion, and that the apparent necessity for the hearing thereof by the court, when not full, was not caused by him, either intentionally or otherwise. And thereupon the court overruled the objections of the counsel of Walden to the court, receiving and hearing said motion, and decided that the motion might proceed.

On the hearing of the motion the records, orders, and proceedings in the action of ejectment in this suit, and of the suits in chancery, and several bills filed therein, and orders and decrees made in the several cases of Bodley, &c., vs. Walden, and the order in this case extending the demise in the declaration, and the record of the case, of the rule obtained, and motions made in said action of ejectment, to have the said order allowing the said demise to be extended quashed and set aside, and the proceedings and orders of the court in said rule and motion were altogether, with the record of the habere facias, which this motion was made to have quashed, referred to, and given in evidence, and made part thereof, so that the whole may appear in any transcript of the record of this motion which may be made for the purpose of a writ of error, or any other purpose.

On the above matter appearing in the record, and the fact of the death of the said Lewis Craig before the issuing of the said habere facias, which was admitted by the parties, the court, on the grounds filed,

and constituting a part of the record of this case, sustained the said motion, and quashed and set aside said writ of habere facias.

To which several decisions of the court, above stated, the counsel of Walden excepted, and prays that this his bill of exceptions may be signed, sealed, and enrolled; and the same is allowed.

THOMAS B. MONROE. [SEAL.]

And afterwards, to wit, at the November term of the court aforesaid, to wit, on the 9th November, 1840, the following order was made, to wit:

JOHN DOE, on demise of Ambrose Walden, plaintiff,
against
LEWIS CRAIG'S heirs and Jonathan Rose, defendants. } In ejectment.

This day came the plaintiff, by his attorney, and on his motion it is ordered that John Bing and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman and Sarah Tureman, his wife, David Childs, John Chiles, Ann Soward, Maria Soward, Elizabeth Soward, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, Macoy Craig, Jane Craig, Melvina Craig, Jno. H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of Lewis Craig, one of the original defendants, and Jonathan Rose, the other original defendant, and Benjamin Umstead, Thos. Blair, and Nicholas Proctor, the tenants now in possession of the land for which the judgment in ejectment was rendered, show cause here, on the 2d day of the next term of this court, why the demise in the plaintiff's declaration in ejectment shall not be extended to one hundred years.

And it is ordered that a copy hereof be served upon the said heirs of Lewis Craig, Jonathan Rose, Benjamin Umstead, Thos. Blair, Nicholas Proctor, and on such other persons, if any, as may be found in possession of the land, or any part thereof.

Upon a copy of which order the marshal made the following return, to wit:

Executed, prior to 25th December, on Lewis Craig, Wm. Craig, Elizabeth Kemp, Jane, Malvina, and Polly Craig, Catharine King, (Bing,) Francis Barker, Jno. McCoy and Frances, his wife, late Craig, David and John Childs, Ann, Maria, and Elizabeth Soward, Jno. H. Craig, Jno. N. Proctor, Thos. Blair, and Ben. Umstead. The other defendants not found. Most, if not all of them, are *no* inhabitants, as I am informed, or dead. JNO. M. McCALLA, *M. K. D.*

A copy.—Att. JNO. H. HANNA, *C. C. C. K. D.*

The following is a copy of the record of the ejectment suit of John Den, on demise of A. Walden, against Craig and Chapin, to wit:

Copy—Record. A. Walden against Craig and Chapin.

Pleas before the honorable Harry Innis, judge of the district court of the United States of America in and for the Kentucky district, holden at the Capitol, in the town of Frankfort, on the 19th day of June, in the year A. D. 1800.

Be it remembered that heretofore, to wit, at a court of the United States of America, holden in and for the Kentucky district, in the month of March, in the year of our Lord one thousand seven hundred and ninety-seven, came John Den, lessee of Ambrose Walden, by his attorney, and filed the following declaration in ejectment, to wit:

KENTUCKY DISTRICT, *to wit:*

John Den complains of Richard Fen, in custody, &c., for that, to wit, that whereas Ambrose Walden, on the 15th day of August, in the year of our Lord 1789, in Mason county, in Kentucky district aforesaid, had devised and granted, and to farm let, to the said John Den, 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in Mason county aforesaid: To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the date of the said lease unto the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Richard Fen afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John Den, so ejected, drove out, and amoved from his said possession, and then and there did other injuries to him, against the peace and to the damage of the said John Den sixty dollars; and therefore he brings suit, &c.

JOHN DOE,
RICHARD ROE,
Pledges, &c.
WM. CLARK, *for Plaintiff.*

I am informed that you are in possession of, or claim title to, the premises in the declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as casual ejector, and having no claim or title to the said premises, do advise you to appear, on the first day of next March term, in the court of the United States for the district aforesaid, by some attorney of said court, and then and there, by rule of said court, cause yourself to be made defendant in my stead; otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your loving friend,
RICHARD FEN.

BOURBON COUNTY, *sct:* 28 *January*, 1797.

On the 22d day of February, 1797, came Thomas McGlauton before me, the subscriber, one of the justices of the peace for said county,

and made oath that, on the 17th day of this present month, February, he did deliver a copy of the foregoing declaration and notice on the premises, in the foregoing declaration mentioned, unto Amzil Chapin, he being tenant in possession of the premises in the said declaration mentioned; and that he also, on said day, did deliver another copy of the said declaration and notice to the wife of Charles Rector, one other tenant in possession of other part of the premises in the said declaration mentioned; and also, on the same day, did deliver another copy of the said declaration and notice to the wife of William Allen, one other tenant in possession of other part of the premises in the said declaration of ejectment mentioned; and this deponent further saith, that he told them all severally that it was a declaration in ejectment, and unless they did appear, by some attorney of the court of the United States for said district, the next ensuing term, there would be judgment thereupon against the defendant by default, and they would be turned out of possession, or words to that effect.

WILL. NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made herein, to wit:

It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action, it is therefore ordered by the court that the defendants appear, on the 1st day of the next term, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto; or, on failure thereof, they having notice of this order, judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff.

And afterwards, to wit, at the March term of said court, in the year 1798, the following order was made herein, to wit:

On motion it is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, Amzel Chapin, be made defendants to this suit instead of the casual ejector, Richard Fen, and that they will immediately appear to the plaintiff's said action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein mentioned, and plead thereto not guilty, and agree to insist upon the title only at the trial; and it is further ordered that if, upon the trial of the issue, a verdict should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution if the plaintiff himself does not pay them.

Whereupon the said defendants, by their attorney, confess the lease, entry, and ouster in the declaration supposed, and agree to insist upon the title only at the trial; and the said defendants come and defend the force and injury, when and where, &c., and say that they are in nowise guilty of the trespass in ejectment in manner and form as the plaintiff against him hath complained; and of this they put themselves

upon the country, and the plaintiff doth so likewise. Therefore, let a jury come, &c.

And it is further ordered, that Miles W. Conway do go on the land in controversy between the parties on the day of next, if fair, if not, then on the next fair day, and then and there lay off the same, as either party shall direct, having regard to all deeds and other evidence that may be produced, report all matters of fact specially, and return four fair plats and certificates into the clerk's office of this court before the day of hearing; and the sheriff of Mason county is directed to attend the said surveyor to remove force, should any be offered; and further proceedings are continued until the next court.

And afterwards, to wit, at the June term of the court aforesaid, to wit, on the 19th day of June, A. D. 1800, the following special case was submitted to the court, by consent of the parties herein, by their attorneys. The tract of land marked on the plat by the letters A, B, C, D, was duly granted to the said Walden, lessor of the plaintiff, by patent from the Commonwealth of Virginia, bearing date the 21st day of November, 1786. The said Walden and Simon Kenton executed the agreement A respecting the locating of said land; the said agreement is made part of this case. The defendants are in possession of that part of the tract marked on the plat by the letters E, F, G, C, and claim the said part of the said tract of land under the said agreement A, and the endorsement thereon, and a division thereof, made as certified by the report B; which report and endorsement on said agreement is also made a part of this case.

If, upon the whole, the court shall be of opinion, that the legal title to the said part of the said tract of land, marked on the plat as aforesaid by the letters E, F, G, C, is in the plaintiff, then judgment be entered for him; if not, judgment be entered for the defendants.

WILLIAM CLARK,
Attorney for Plaintiff.
THOMAS TODD,
Attorney for Defendants.

And the court having fully considered and understood the said case, is of opinion, that the legal title to the said part of the said tract of land, marked on the plat E, F, G, C, is in the plaintiff, and was on the day of filing the declaration in this suit. It is therefore considered by the court, that the plaintiff recover against the said defendants, Lewis Craig and Amzil Chapin, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendants in mercy, &c.

And on motion of the plaintiff, by his attorney, the United States' writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of the terms aforesaid, returnable to the next court. The following are the exhibits made part of the agreed case :

MASON COUNTY, *sct:*

We, the commissioners appointed by the worshipful the court of Mason aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth and non-residents, and being called on to divide a tract of land, containing 1333 acres, patented in the name of Ambrose Walden, between him, the said Ambrose, and Lewis Craig, assignee of Craig and Johnson, assignee of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig as aforesaid, proceeded on this day to divide the same in the said proportions, that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit:

Beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence north 22 east, with the old line 155 poles, to two white ashes and sugar tree; thence north 61° west, 329 poles, to a walnut and two read oaks in Johnson's line; thence south 51° west, with Johnson's line 168 poles, to three white ashes in John Walden's line; thence to the beginning, containing 320 acres. To have and to hold the said quantity of 320 acres, to him, the said Lewis Craig, his heirs and assigns, forever, free and clear from the let, molestation, and hindrance of him, the said Ambrose Walden, his heirs, &c., forever, and to hold to him, the said Lewis Craig, his heirs, &c., in severalty, and no longer, subject to the claim of him, the said Walden. Also divided the said tract of land, as follows: Beginning at two white oaks and sugar tree, in John Walden's line, and corner to Lewis Craig; thence north 22 east, 375 poles, to a red oak and honey locust; thence north 68 west, 260 poles, to a white oak and box elder in Jacob Johnson's line; thence with said line south 39 east, 112 poles, to two buckeyes and white oak, east corner to said Johnson; thence south 51 west, 340 poles, to a walnut and two red oaks, corner to Lewis Craig; thence south 61 east, 329 poles, to the beginning. To have and to hold the said tract of land, containing 640 acres, to him, the said Ambrose Walden, and his heirs, &c., forever, in severalty and free and clear from the claim of him, the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns, forever. And we, the said commissioners, do certify and declare, that the residue of the said survey in the name of the said Ambrose Walden is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is on that account left on tenancy in common between the said Ambrose Walden and the said Lewis Craig, and subject to a future division, as the event of the said interference may justify.

In witness whereof, we, the said commissioners, have hereunto set our hands and affixed our seals, this 10th day of February, 1794.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered before—

MASON COUNTY, *sct:* *April court*, 1797.

This division of lands, between Walden and Craig, was returned by the commissioners, and ordered to be recorded.

Teste: THOMAS MARSHALL, JR., *M. C.*

B.

Articles of agreement made and done this 1st day of May, 1780, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Caroline county, Virginia, witnesseth: That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden in the district of Kentucky, in consideration of which the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of one-third of the said ten thousand acres, so located, unto the aforesaid Simon Kenton, respect being held to quality and other local advantages; and lastly, both parties bind themselves to the performance of the premises under the penalty of fifty thousand pounds.

his
SIMON X KENTON, [SEAL.]
mark.
AMBROSE WALDEN. [SEAL.]

Signed, sealed, and delivered in presence of—
AGNUS CAMERON,
JOSEPH KATRITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest of the within article to John Craig and Robert Johnson, this 24th day of April, 1787.

SIMON KENTON.

JOHN WILSON,
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May 18th, 1791.

ROBERT JOHNSON.

TOLIVER CRAIG.

We assign to Lewis Craig the third part of the three thousand acre entry in the name of Walden, and one-third of three thousand acre entry in the name of John Taylor, and one-third of one thousand five hundred acres in the name of William Nelson; John Craig's interest is only given up. December 28th, one thousand seven hundred and ninety-three.

ROBERT JOHNSON,
Trustee to John Craig.
ELIJAH CRAIG,
Trustee to John Craig.

[For plat see original.]

The whole of this land is now claimed and contended for by Thos. Bodley and James Hughes.

February 10*th*, 1794.

Surveyed for Ambrose Walden 1555 acres of land in Mason county, and on the waters of Johnson's fork of Licking, and bounded as follows, viz: Beginning at A, a buckeye and hoop ash stump, shewn for Walden's most northwestwardly corner; thence S. 68° E., 520 poles, to B, two red oaks and honey locusts; thence S. 22° W., 534 poles, to C, an ash, Spanish oak, mulberry, and bukeye, corner to John Walden's survey; thence with his line, N. 61° W., 524 poles, to D, a hickory, and oak, and white oak; thence N. 22° E., 424 poles, to the beginning. Also divided the above land as follows, to wit: Beginning at C, an ash, Spanish oak, mulberry, and buckeye; thence N. 22° east, with Walden's, 155 poles to E, two white ashes and sugar tree, corner to Ambrose Walden's land; thence N. 61° W., 329 poles, to F, a walnut and two red oaks in Jacob Johnson's line; thence with the same S. 61° East, to the beginning at C, including 400 acres for Lewis Craig, as his equal third part in quality, of that part of Ambrose Walden's survey 1,333 acres by patent, that is not included in Jacob Johnson's survey, surveyed as the commissioners of Mason county allotted and directed.

Also divided the above land as follows, to wit: Beginning at E, two white ashes and sugar tree, corner to Lewis Craig's 400 acres; thence N. 22° E., 375 poles, to B, a red oak and honey locust; thence N. 68° W., 260 poles, to I, a white oak and box elder, in Johnson's line; thence with the same S. 90° E., 112 poles, to H, two buckeyes and white oak, corner to said Johnson's; thence with his line, S. 51° W., 340 poles, to F, a walnut and two red oaks, corner to said Craig; thence S. 61° east, with his line to the beginning, at E, including 535 acres for said Ambrose Walden, as his equal two-thirds in quality of all that part of said Ambrose Walden's survey of 1,333 acres by patent, that is not included in Jacob Johnson's survey, surveyed as the commissioners of Mason allotted and directed; and the remaining 620 acres, known in the plat by the letters A, I, H, C, D, is that part of said Walden's survey of 1,333 acres that is claimed by a survey of Jacob Johnson, and left undivided by said commissioner.

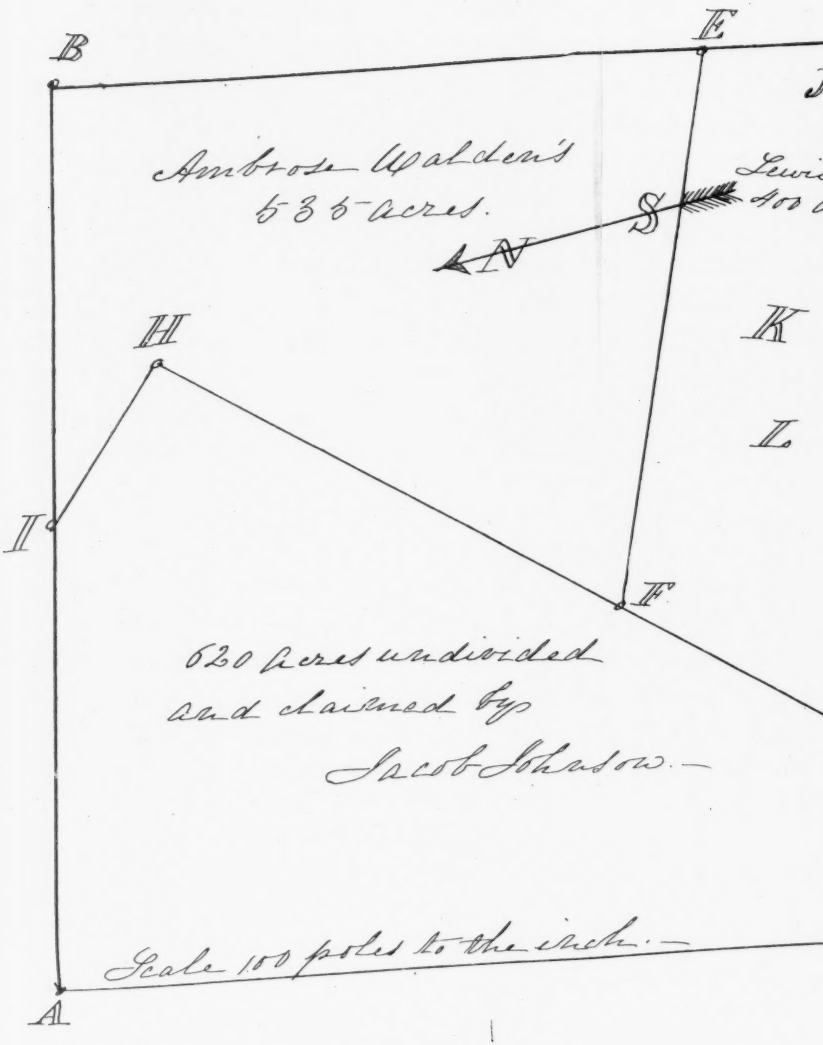
WHITFIELD CRAIG, *D. S. M. C.*

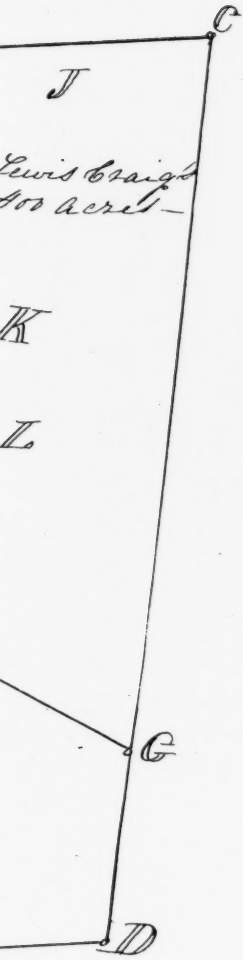
N. B. The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Rose, and marked in the plat thus, J; also sold to William Allen, and marked in the plat thus, K; also sold to Mr. Rector and marked in the plat thus, L. The said Rose, Allen, and Rector are living on the 400 acres in plat marked Lewis Craig, and nearly as the letters point surveyed by me.

WHITFIELD CRAIG.

And on the 4th day of August, in the year 1800, the following habere facias was issued, to wit:

84


B
E
Ambrose Walden's
535 acres.
S
N
H
K
L
I
F
620 Acres undivided
and claimed by
Jacob Johnson.—
Scale 100 poles to the inch.—
A


C
J
Lewis Craig's
400 acres
K
L
G
D

[SEAL.] United States of America, to the marshal of Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States, for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and Amzil Chapin his term yet to come, of and in 4 dwelling houses, 20 out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid; to have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years from thence next ensuing, and fully to be com*pleat* and ended; by virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Craig and Chapin afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Chapin are convict, as appears to us of record. Therefore, we command you that, without delay, you cause the said John Den to have his possession of his farm aforesaid, yet to come, of and in the lands and tenements aforesaid, with the appurtenances; and how you shall execute this writ make appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the 3d Monday in November next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereto affixed, this 4th day of August, 1800, and of our independence the twenty-fifth.

Teste: THOS. TUNSTALL, *C. K. D. C.*

The above habere facias was returned by A. Walden, the 5th day of September, 1811.

And on the 14th day of November, 1811, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lesse of Ambrose Walden, lately in our district court of the United States, for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and *Anzel* Chapin his term yet to come of and in 4 dwelling houses, 20 out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the dis-

trict aforesaid; to have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Craig and Chapin afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John from his said farm, his said term not being yet ended, and kept out, and still doth keep out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Chapin are convict, as appears to us of record. Therefore, we command you [that], without delay, you cause the said John Den to have his possession of his farm aforesaid, yet to come, of and in the lands and tenements aforesaid, with the appurtenances; and how you shall have executed this writ make appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the 1st Monday in November next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 14th day of September, 1811, and of our independence the 36th.

Attest: JOHN H. HANNA, *C. K. D. C.*

This habere facias was returned the 16th of May, 1812, by A. Walden.

And, on the 2d day of June, 1812, the following habere facias was issued, to wit:

WALDEN'S LESSEE
against
CRAIG & CHAPIN. } Ex'on dated 2d June, 1812.

His term yet to come, of and in 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid. This habere facias was made returnable to August rules, 1812, delivered to John A. Mitchell, who made the following return thereon, to wit:

Stayed by supersedeas, 62 miles travelling.

JNO. A. MITCHELL, *Dep.*
For R. CROCKETT, *M. K. D.*

Petition of Craig & Chapin.

To the honorable the judges of the court of the United States for the 7th circuit, for the Kentucky district:

Respectfully showeth your petitioners, Lewis Craig and Amzil Chapin, that, at the June term, 1800, a judgment in ejectment was ren-

dered against them in the court of the United States for the Kentucky district, in an action of ejectment, brought by the lessee of Ambrose Walden, for four dwelling-houses, &c., on which, since the last term of this court, an habere facias possessionem has been issued against them.

Your petitioners are advised that the issuing the said habere facias is both irregular and illegal, and they are furnished by their counsel with the following assignment of errors:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811. No execution ought to have issued after the lapse of a year after the entry of judgment, without a scire facias. Remmington on Ejectment, 142.

2dly. The term had expired before the entry of judgment; of course the judgment itself is impeachable; but it is sufficient for the petitioners that no habere facias can legally issue when the term has expired. Remmington on Ejectment, 146, '7, 283, 122.

Your petitioners, therefore, pray that a supersedeas may issue, &c., &c.

J. HUGHES,
For Craig & Chapin.

UNITED STATES OF AMERICA,
Kentucky district, sct:

Issue a supersedeas agreeably to the foregoing petition, taking bond and security according to law. Witness my hand as judge of the said district, this 6th day of June, 1812.

HARRY INNIS.

To JNO. H. HANNA, *Clk. U. S., D. C., &c.*

Injunction bond.

Know all men by these presents, that we, Lewis Craig, Amzel Chapin, and Thomas Bodley, of the State of Kentucky, are held and firmly bound unto Ambrose Walden, of the State of Virginia, in the sum of $1,000; to the payment of which, well and truly to be made to the said Walden, his heirs, and executors, and administrators, or assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 8th day of June, A. D. 1812.

The condition of the above obligation is such, that whereas the above bound Lewis Craig and Amzel Chapin have this day obtained a writ of supersedeas, to stay all further proceedings upon a writ of habere facias which issued from the office of the district court of the United States, in and for the Kentucky district, on the second day of June, 1812, wherein John Den, lessee of the above named Ambrose Walden, is plaintiff, and the said Craig & Chapin *is* defendants, for the possession of four dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of

Mason, in the district aforesaid. Now, if the said Craig & Chapin shall prosecute the said supersedeas with effect, or, in case of failure thereof, the said Craig, Chapin, and Bodley shall well and truly pay, or cause to be paid, all such damages and costs as may be awarded against the said Craig or Chapin in case the proceeding aforesaid shall be affirmed, then the above obligation to be void, or else to remain in full force and virtue.

[SEAL.]
[SEAL.]
THOS. BODLEY, [SEAL.]
By J. HUGHES, *his atto. in fact.*

Supersedeas.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded, that, from all further proceedings on a habere facias issued from the office of the district court of the United States in and for the Kentucky district, on a judgment in that court, wherein John Den, lessee of Ambrose Walden, is plaintiff, and Lewis Craig and Amzel Chapin *is* defendants; which habere facias issued on the second day of June, A. D. 1812, against the said Lewis Craig and Amzel Chapin, for the possession of four dwelling-houses, 20 outhouses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid, you altogether supersede; which habere facias, before the judges of our 7th circuit court of the United States, in and for the Kentucky district, is brought to be corrected, on the petition of the said Lewis Craig and Amzel Chapin, who have given bond and security to prosecute with effect; and, if the proceedings aforesaid should be affirmed, to satisfy and pay all such damages and costs as shall be awarded against them. We command you to give notice to the said Ambrose Walden, that he be before the judges of our 7th circuit court, at the Capitol, in the town of Frankfort, on the first Monday in November next, to shew cause why the said habere facias should not be quashed, and have then there this writ.

In testimony whereof, John Marshall, esq , chief justice of the said United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our independence.

Attest: JNO. H. HANNA,
C. C. C. K. D. C.

Marshal's return.

Executed 17th June, 1812; 62 miles travelling.
JOHN A. MITCHELL, *Deputy.*
For R. CROCKETT, *M. K. D.*

And afterwards, to wit, at the May term in the year 1813, of the 7th circuit court of the United States, in and for the Kentucky district, the following order was made herein, to wit:

The court being now sufficiently advised of, and concerning, the premises, do order that the executions issued herein be quashed, they having been issued after the expiration of the demise in the declaration, and that the said plaintiff recover against the lessor of the defendant their costs in this behalf expended.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1817, to wit, at a continuation of said term on the 5th of August next ensuing, the following order was made herein, to wit:

This day came the plaintiff in the foregoing suit, and moved the court for a rule on the defendants aforesaid to shew cause, on the 6th day of the next term of this court, why the demise in the declaration should not be extended. And, on the 22d of May, 1819, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, late in the district court of the United States, in and for the Kentucky district, has, by judgment of the said court, recovered against Lewis Craig and Amzel Chapin his term yet to come and unexpired in four dwelling-houses, 20 out-houses, 15 acres of meadow, and 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason; therefore we command you, that, without delay, you cause the said John Den to have possession of the land aforesaid, with the appurtenances, and how you shall have executed this writ return to us on the first Monday in July next.

In testimony whereof, John Marshall, esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 22d day of May, 1819, and of our independence forty-three.

Attest: INO. H. HANNA, *C. C. C. K. D.*

This execution was not taken out of the office.

And afterwards, to wit, at the May term of said court, in the year 1824, (until which time the motion to extend the demise in the declaration was continued,) the following order was made herein, to wit:

Order extending demise.

On motion of the plaintiff, by his attorney, leave is given to amend the declaration, by extending the demise to fifty years, which is done accordingly; but execution not to go out before the first Monday of March next.

And afterwards, to wit, on the 30th day of May, 1835, the following habere facias was issued in this case, to wit:

JOHN DEN, on demise of AMBROSE WALDEN,
against
LEWIS CRAIG and AMZEL CHAPIN.

Execution dated 30th May, 1835.

His term yet to come of and in four dwelling-houses, 20 out houses,

15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

The marshal will not deliver to the plaintiff, upon this execution, any land outside of the locator's part, nor any land within which is enjoined by the order of December 2d, 1834.

This execution was made returnable to first Monday in August, 1835, and delivered to Walden, but never returned to the office.

And afterwards, to wit, on the 18th day of November, 1836, the following habere facias was issued, to wit:

JOHN DEN, on the demise of AMBROSE WALDEN,
against
AMZEL CHAPIN, LEWIS CRAIG, the other defendant having departed this life.

Execution dated 18th November, 1836.

His term yet to come, and in four dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid. The marshal will deliver only so much of the land to the plaintiff in this writ, as lies within the following boundary: Beginning at a stake six feet north of a white oak tree, corner of Walden, as last surveyed, and represented at 8 on the connected plat; and running thence, with that line, south 37° 25′ east, 297 poles, to a stake in a line of Walden's original survey in Tibb's lane, at *f*; thence, with that line, south 20° west, 288 poles, to a stake in a lane at the intersection of the decreed line, 82 poles, north 20° east, from said Walden's original corner near Proctor's, at G; thence with the decreed line, south 52° 35′ west, 95 poles, to a stake in another of said Walden's old lines in cleared land, at h; thence, with the old line, north 70° west, 220 poles, to a stake, i, in another of the decreed lines; thence, with that line, north 37° 25′ west, 273 poles, to two buckeyes and sugar tree at 7; and thence north 53° 35′ east, 461 poles and 21 links, to the beginning; containing, by said survey, 1,144 acres, 2 roods, and 22 poles.

This execution was made returnable to February rules, 1837, delivered to John Walden, and never returned.

And afterwards, to wit, at the November term, 1836, of said court, to wit, the 19th November, came the parties, by their attorneys; and the defendant, by his attorney, moves the court to quash the execution issued in this cause, on the following grounds:

1. That there is no legal or valid judgment upon which the execution could regularly issue.

2d. That the judgment, such as it is, was rendered more than twenty years ago; and it was irregular and illegal to issue any execution on it, without a scire facias first sued out against the defendants, &c. L. Craig is dead, and no execution could regularly issue against the survivor without revival.

3d. There is no judgment upon which, without a revival by scire facias, any execution could regularly and legally issue.

4th. That the execution irregularly and illegally issued on a judgment inoperative, and which, from lapse of time, gave no right to the clerk, without being revived, to issue the execution, or any other. And the arguments of counsel being heard; but the court not being advised, took time, &c.

And afterwards, to wit, at a subsequent day of the term, to wit, on the 21st of November, the court being sufficiently advised of and concerning the defendant's motion to quash the execution in this case, do consider that the habere facias, which issued in this case on the 18th November instant, be and the same is hereby quashed, and that the defendants in said execution recover of the lessor of the plaintiff, Ambrose Walden, their costs herein expended.

On the trial of this motion, the following bill of exceptions was tendered to the court, signed and ordered to be entered, which is as follows, to wit:

Be it remembered, that, on the above motion being made in court by the counsel of the plaintiff therein, the counsel of Walden objected to said motion being made, and to their being then received or heard by the court, on the following grounds:

1st. Because there had been no notice given to the said Walden, his agent, or attorney.

2d. Because the court having on the day before the making of the motion disposed of all the business before it, mentioned on the adjournment that the court would meet next day for the purpose of hearing read and signing the orders, and the circuit judge had accordingly left, and was not then on the bench.

On the hearing of these objections, it appeared on the first ground that the counsel of Walden had, before the issuing of the said execution, suggested the death of the said Craig, and caused the same to be recited in the execution, and his death was in nowise controverted by either party

And, on the other ground of objection, it appeared that the clerk had, on the dissolution of the injunction on the — day of the present term, by which the said Walden had been enjoined from suing out execution on the judgment in ejectment, informed the counsel of Walden that he would refuse to issue a writ of habere facias unless he was ordered or instructed to do so by the court, and requested him to make his motion for that purpose within the term; but that he had, afterwards, upon receiving a bond of indemnity from the agent of Walden, and three days before the making these motions, informed the counsel of both parties that he would, in consequence thereof, issue the executions.

That before the adjournment of the court, the day before the motion was made, when the business was disposed of, it was mentioned from the bench that the court would adjourn to meet next day to hear and sign the orders, upon which the counsel of Walden inquired whether

any other business would be done; to which the district judge, who it was understood would alone constitute the court next day, answered that he hoped not; to which the counsel of the plaintiff in these motions answered, that he did not know that he would have any business, but that if he should have any motion to make, he would certainly make it; upon which the court adjourned to the usual hour next day.

It appeared from the statement of the counsel for the plaintiff in the motion, whose clients had not attended, and were absent, that he had understood when it was said the bond of indemnity was given, that the clerk intended to issue, and the counsel or agent of Walden intended to take out, the execution, yet he did not know or believe until the night after the adjournment of the court, on the day before the making of the motion, that the execution had issued, and that he then informed the counsel of Walden that he would on the next day make the motion in court.

On the above state of [the] case, the court was of opinion, on the first ground, that no other notice of the motion was necessary.

And on the second ground of objection, the court was of opinion that it did not appear that the counsel of the plaintiff in the motion had sought this occasion, when the court was constituted of the district judge only, to make said motion, and that the apparent necessity for the hearing thereof by the court, when not full, was not caused by him either intentionally or otherwise.

And thereupon the court overruled the objections of the counsel of Walden to the court receiving and hearing said motion, and decided that the motion might proceed.

On the hearing of the motion, the records, orders, and proceedings in the action of ejectment in this suit, and of the suits in chancery, and several bills filed therein, and orders and decrees made in the several cases of Bodley, &c., vs. Walden, and the order in this case extending the demise in the declaration, and the record of the case of the rule obtained, and motions made in said action of ejectment to have the said order, allowing the said demise to be extended, quashed and set aside, and the proceedings and orders of the court in said rule and motion were, altogether, with the record of the habere facias, which this motion was made to have quashed, referred to, and given in evidence, and made part hereof, so that the whole may appear in any transcript of the record of this motion which may be made for the purpose of a writ of error, or any other purpose.

On the above matter appearing in the records, and the fact of the death of the said Lewis Craig before the issuing of the said writ of habere facias, which was admitted by the parties, the court, on the grounds filed and constituting a part of the record of this case, sustained the said motion, and quashed and set aside said writ of habere facias. To which several decisions of the court above stated the counsel of Walden excepted, and prays that this his bill of exceptions may be signed, sealed, and enrolled, and the same is allowed.

THOS. B. MONROE. [SEAL.]

A copy. Attest: JNO. H. HANNA, *C. C. C. C. K. D.*

The record of the case of John Den, on the demise of A. Walden, against Lewis Craig and William Allen, is as follows, to wit:

Copy — record—A. Walden against Craig & Allen.

Pleas before the honorable Harry Innis, judge of the district court of the United States of America in and for the Kentucky district, holden at the Capitol, in the town of Frankfort, on the 19th day of June, in the year A. D. 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, holden in and for the district of Kentucky, in the month of March, in the year of our Lord 1797, came John Den, lessee of Ambrose Walden, by his attorney, and filed the following declaration in ejectment, to wit:

KENTUCKY DISTRICT, *to wit:*

John Den complains of Richard Fen, in custody, &c.; for that, whereas Ambrose Walden, on the 15th day of August, in the year of our Lord 1789, in Mason county, in Kentucky, district aforesaid, had demised and granted, and to farm let to the said John Den, four dwelling houses, 20 out houses, 15 acres of meadow, and 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in Mason county aforesaid; to have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the date of the said lease unto the full end and term of ten years, from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Richard Fen afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John Den, so ejected, drove out, and amoved from his said possession, and then and there did other injuries to him, against the peace, and to the damage of the said John Den sixty dollars; and thereupon he brings suit, &c.

WM. CLARKE, *for Plaintiff.*

Pledges to prosecute—

JOHN DOE & RICHARD ROE.

I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as casual ejector, and having no claim or title to the said premises, do advise you to appear on the first day of the next March term, in the court of the United States, for the district aforesaid, by some attorney of that court, and then and there, by a rule of the said court, cause yourself to be made defendant in my

stead, otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your living friend,

RICHARD FEN.

28th January, 1797.

BOURBON COUNTY, *sct:*

On the 22d day of February, 1797, came Thomas McClahan before me, the subscriber, one of the justices of the peace for said county, and made oath that he, on the 7th day of this instant month, February, he did deliver a copy of the foregoing declaration and notice on the premises, in the foregoing declaration mentioned, unto each of the following persons, to wit, Amzil Chapin, Abraham Shocky, and Jonathan Rose, each being tenant in possession of part of the premises in the said declaration mentioned; and that he also, on the said day, did deliver another copy of the said declaration and notice to the wife of Charles Rector, one other tenant in possession of [the] other part of the premises in the said declaration mentioned; and also, on the same day, did deliver one other copy of the said declaration and notice to the wife of William Allen, another tenant in possession of other part of the premises in the said declaration of ejectment mentioned.

And this deponent further saith that he told them all severally that it was a declaration in ejectment, and unless they did appear, by some attorney of the United States for said district, the next ensuing term, there would be judgment thereupon against the defendant by default, and they would be turned out of possession, or words to that effect.

WILLIAM NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made, to wit:

It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action, it is therefore ordered by the court that the said defendants appear here on the 1st day of the next term, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto; or, on failure thereof, (they severally having notice of this order,) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff.

And afterwards, to wit, at the March term, in the year 1798, the following order was made herein, to wit:

On motion, it is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, William Allen, be made defendants to this suit instead of the casual ejector, Richard Fen, and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein mentioned, and plead thereto not guilty, and agree to insist upon the title only at the trial.

And it is further ordered, that if upon the trial of the issue a verdict should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself doth not pay them.

Whereupon the said defendants, by their attorney, confess the lease, entry, and ouster in the declaration supposed, and agree to insist upon the title only at the trial; and the defendants come and defend the force and injury, when and where, &c., and say they are in no wise guilty of the trespass in ejectment in manner and form as the plaintiff against them hath complained, and of this they put themselves upon the country; and the plaintiff doth so likewise; therefore let a jury come, &c.

And it is further ordered, that Miles W. Conway do go on the lands in controversy between the parties on the day of next, if fair, if not, then on the next fair day, and then lay off the same as either party shall direct, having regard to all deeds and other evidence, and report all matters of fact specially, and return four fair plats and certificates into the clerk's office of this court before the day of hearing. And the sheriff of Mason is directed to attend the said surveyor to remove force, should any be offered; and further proceedings are continued until the next court.

And afterwards, to wit, at the June term of the said court, to wit, on the 19th day of June, A. D. 1800, the following special case was submitted to the court by consent of the parties herein, by their attorneys, to wit:

The tract of land marked on the plat by the letters A, B, C, D, was duly granted to the said Walden, lessor of the plaintiff, by patent from the Commonwealth of Virginia, bearing date the 21st day of November, 1786.

The said Walden and Simon Kenton executed the agreement A, respecting the locating of said lands; the said agreement is made part of this case.

The defendants are in possession of that part of the tract marked on the plat by the letters E, F, G, C, and claim the said part of the said tract of land under the said agreement A, and the endorsements thereon, and a division thereof made, as certified by the report B; which report and endorsement on said agreement, is also made a part of this case. If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land, marked on the plat as aforesaid by the letters E, F, G, C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendants.

WM. CLARKE, *Attorney for plaintiffs.*
THOS. TODD, *Attorney for defendants.*

And the court having fully considered and understood the said case, is of opinion that the legal title to the said part of the said tract of land, marked on the plat E, F, G, C, is in the plaintiff, and was on the day of filing the declaration in this suit.

It is therefore considered by the court, that the plaintiff recover

against the said defendants, Lewis Craig and Wm. Allen, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendants in mercy, &c. And on motion of the plaintiff, by his attorney, the United States writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of the term aforesaid, returnable to the next court.

The following are the exhibits, made part of the agreed case:

MASON COUNTY, *sct:*

We, the commissioners appointed by the worshipful court of Mason aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth and non-residents, and being called on to divide a tract of land containing 1333 acres, patented in the name of Ambrose Walden, between him, the said Ambrose, and Lewis Craig, assignee of Craig and Johnson, assignee of Simon Kenton, the locator of the said tract, two thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig as aforesaid, proceeded on this day to divide the same in the said proportions, that is to say, one third to the said Craig, and the remaining two thirds to the said Ambrose Walden, as follows, to wit:

Beginning at Walden's south east corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence N. 22 E., with the old line, 155 poles, to the two white ashes and sugar tree; thence N. 62° W., 329 poles, to a walnut and two red oaks in Johnson's line; thence S. 51° W., with Johnson's line 168 poles, to three white oaks in John Walden's line; thence to the beginning, containing 320 acres. To have and to hold the said quantity of 320 acres to him, the said Lewis Craig, his heirs and assigns forever, free and clear from the let, molestation, and hinderance of him, the said Ambrose Walden, his heirs, &c., forever; and to hold to him, the said Lewis Craig, his heirs, &c., in severalty, and no longer, subject to the claim of him, the said Walden.

Also divided the said tract of land as follows: beginning at two white oaks and sugar tree in John Walden's line, and corner to Lewis Craig, thence N. 22 east, 375 poles, to a red oak and honey locust; thence N 68 west, 260 poles, to a white oak and box elder in Jacob Johnson's line; thence with said line S. 39 E., 112 poles, to two buckeyes and white oak, each corner to said Johnson; thence south 51 W., 340 poles, to a walnut and two red oaks, corner to Lewis Craig; thence S. 61 E., 329 poles, to the beginning. To have and to hold the said tract of land containing 640 acres, to him, the said Ambrose Walden, and his heirs, &c., in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns, forever.

And we, the said commissioners, do certify and declare, that the residue of the said survey, in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is, on that account, left in tenancy in common between the said Ambrose Walden and the said Lewis Craig, and

subject to a future division, as the event of the said interference may justify.

In witness whereof we, the said commissioners, have hereunto set our hands, and affixed our seals, this 10th day of February, 1794.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered before—

MASON COUNTY, *sct:*

April court, 1797. This division of lands between Walden and Craig was returned by the commissioners, and ordered to be recorded.

Teste: THOS. MARSHALL, Jr., *M. C.*

B.

Articles of agreement made and done this 1st day of May, 1780, between Simon Kenton of Kentucky, of the one part, and Ambrose Walden of Caroline county, Virginia, witnesseth:

That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden, in the district of Kentucky; in consideration of which, the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of one third of the said ten thousand acres so located, unto the aforesaid Simon Kenton, respect being held to the quality and other local advantages; and lastly, both parties bind themselves to the performance of the premises, under the penalty of fifty thousand pounds.

SIMON his ⋈ mark. KENTON, [SEAL.]
AMBROSE WALDEN. [SEAL.]

Signed, sealed, and delivered, in presence of—

AGNUS CAMERON,
JOSEPH KATRITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest of the within article to John Craig and Robert Johnson, this 21st day of April, 1787.

SIMON KENTON.

JOHN WILSON,
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May 18th, 1791.

ROBERT JOHNSON.

TOLIVER CRAIG.

We assign to Lewis Craig the third part of the three thousand acre entry in the name of Walden, and one third of three thousand acre en-

try in the name of John Taylor, and one third of one thousand five hundred acres, in the name of William Nelson. John Craig's interest is only given up. December 28th, 1793.

ROBERT JOHNSON, *trustee to Jno. Craig.*
ELIJAH CRAIG, *trustee to Jno. Craig.*

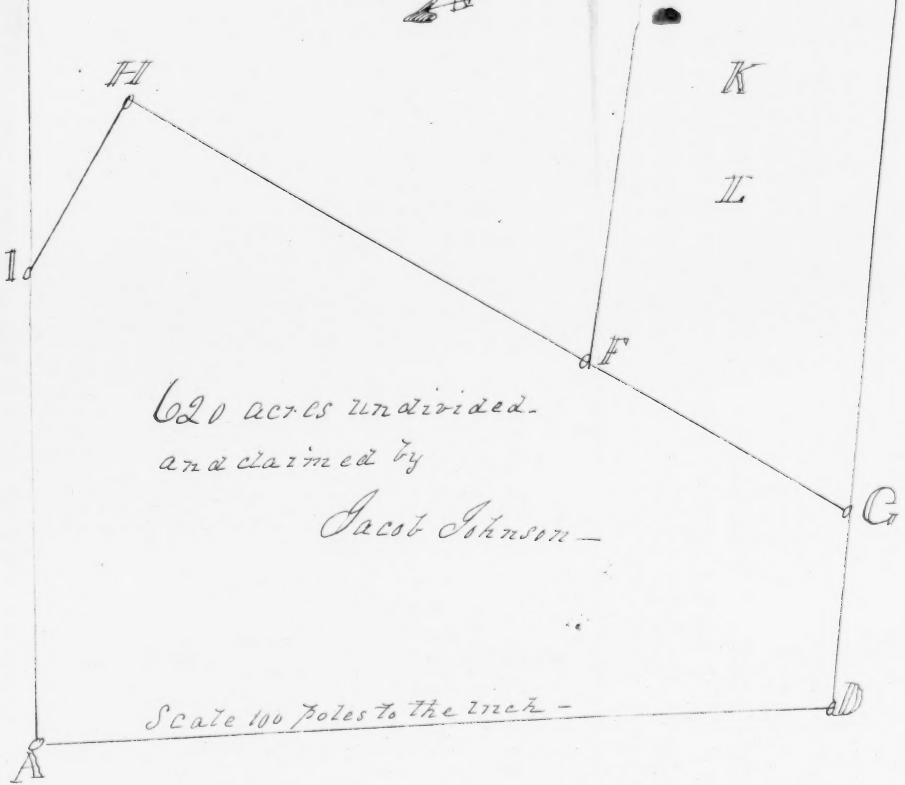
[For plat, see original, page 163.]

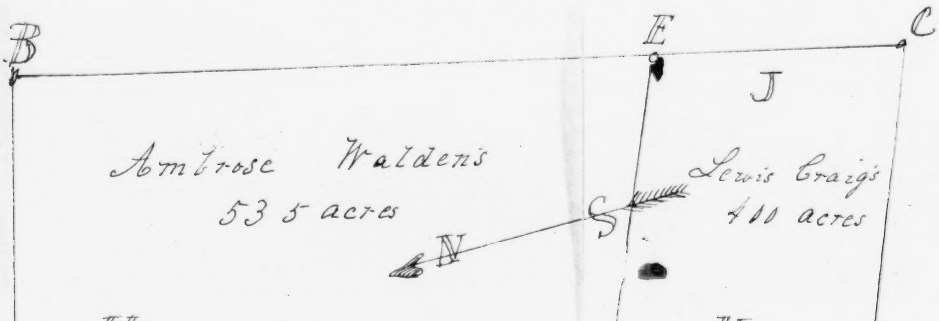
The whole of this land is now claimed and contended for by Thomas Bodley and James Hughes.

February 10th, 1794.

Surveyed for Ambrose Walden 1555 acres of land, in Mason county, and on the waters of Johnson's fork of Licking, and bounded as follows, viz: Beginning at A, a buckeye and hoop ash stump, shewn for Walden's most northwestwardly corner; thence south 68° east, 520 poles, to B, two red oaks and honey locust; thence south 22 west, 530 poles, to C, an ash, Spanish oak, mulberry, and buckeye, corner to John Walden's survey; thence with his line north 61° west, 524 poles, to D, a hickory, red oak, and white oak; thence north 20° east, 424 poles, to the beginning. Also divided the above land, as follows, to wit: Beginning at C, an ash, Spanish oak, mulberry, and buckeye; thence north 22° east, with Walden's line, 155 poles, to E, two white ashes and sugar tree, corner to Ambrose Walden's land; thence north 61° west, 329 poles, to F, a walnut and two red oaks, in Jacob Johnson's line; thence with the same south 51° west, 168 poles, to G, three white oaks, in John Walden's line; thence with the same south 61° east, to the beginning, at *at* C, including 400 acres for Lewis Craig in his equal third part in quality of that part of Ambrose Walden's survey, 1333 acres by patent, that is not included by Jacob Johnson's survey, surveyed as the commissioners of Mason allotted and directed. Also divided the above land, as follows, to wit: Beginning at E, two white ashes and sugar tree, corner to Lewis Craig's 400 acres; thence north 20° east, 375 poles, to B, a red oak and honey locust; thence north 68° west, 260 poles, to I, a white oak and box elder, in Johnson's line; thence with the same south 90° east, 112 poles, to H, two buckeyes and white oak, corner to said Johnson's; thence with his line south 51° west, 340 poles, to F, a walnut and two red oaks, corner to said Craig; thence south 61° east, with his line to the beginning, at E, including 535 acres for said Ambrose Walden as his equal two thirds in quality of all that part of said Ambrose Walden's survey of 1333 acres by patent, that is not included in Jacob Johnson's survey, surveyed as the commissioners of Mason allotted and directed; and the remaining 620 acres known in the plat by the letters A, I, H, G, D, is that part of said Walden's survey of 1333 acres that is claimed by a survey of Jacob Johnson, and left undivided by said commissioners.

WHITFIELD CRAIG, *D. S. M. C.*


H
K
L
I
F
G
A
D
620 acres undivided.
and claimed by
Jacob Johnson —
Scale 100 poles to the inch —


B
E
C
J
Ambrose Waldens
535 acres
Lewis Craigs
400 acres
S
N

subject to a future division, as the event of the said interference may justify.

In witness whereof we, the said commissioners, have hereunto set our hands, and affixed our seals, this 10th day of February, 1794.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered before—

MASON COUNTY, *sct:*

April court, 1797. This division of lands between Walden and Craig was returned by the commissioners, and ordered to be recorded.

Teste: THOS. MARSHALL, Jr., *M. C.*

B.

Articles of agreement made and done this 1st day of May, 1780, between Simon Kenton of Kentucky, of the one part, and Ambrose Walden of Caroline county, Virginia, witnesseth:

That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden, in the district of Kentucky; in consideration of which, the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of one third of the said ten thousand acres so located, unto the aforesaid Simon Kenton, respect being held to the quality and other local advantages; and lastly, both parties bind themselves to the performance of the premises, under the penalty of fifty thousand pounds.

SIMON his ⋈ mark. KENTON, [SEAL.]
AMBROSE WALDEN. [SEAL.]

Signed, sealed, and delivered, in presence of—

AGNUS CAMERON,
JOSEPH KATRITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest of the within article to John Craig and Robert Johnson, this 21st day of April, 1787.

SIMON KENTON.

JOHN WILSON,
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May 18th, 1791.

ROBERT JOHNSON.

TOLIVER CRAIG.

We assign to Lewis Craig the third part of the three thousand acre entry in the name of Walden, and one third of three thousand acre en-

try in the name of John Taylor, and one third of one thousand five hundred acres, in the name of William Nelson. John Craig's interest is only given up. December 28th, 1793.

ROBERT JOHNSON, *trustee to Jno. Craig.*
ELIJAH CRAIG, *trustee to Jno. Craig.*

[For plat, see original, page 163.]

The whole of this land is now claimed and contended for by Thomas Bodley and James Hughes.

February 10th, 1794.

Surveyed for Ambrose Walden 1555 acres of land, in Mason county, and on the waters of Johnson's fork of Licking, and bounded as follows, viz: Beginning at A, a buckeye and hoop ash stump, shewn for Walden's most northwestwardly corner; thence south 68° east, 520 poles, to B, two red oaks and honey locust; thence south 22 west, 530 poles, to C, an ash, Spanish oak, mulberry, and buckeye, corner to John Walden's survey; thence with his line north 61° west, 524 poles, to D, a hickory, red oak, and white oak; thence north 20° east, 424 poles, to the beginning. Also divided the above land, as follows, to wit: Beginning at C, an ash, Spanish oak, mulberry, and buckeye; thence north 22° east, with Walden's line, 155 poles, to E, two white ashes and sugar tree, corner to Ambrose Walden's land; thence north 61° west, 329 poles, to F, a walnut and two red oaks, in Jacob Johnson's line; thence with the same south 51° west, 168 poles, to G, three white oaks, in John Walden's line; thence with the same south 61° east, to the beginning, at *at* C, including 400 acres for Lewis Craig in his equal third part in quality of that part of Ambrose Walden's survey, 1333 acres by patent, that is not included by Jacob Johnson's survey, surveyed as the commissioners of Mason allotted and directed. Also divided the above land, as follows, to wit: Beginning at E, two white ashes and sugar tree, corner to Lewis Craig's 400 acres; thence north 20° east, 375 poles, to B, a red oak and honey locust; thence north 68° west, 260 poles, to I, a white oak and box elder, in Johnson's line; thence with the same south 90° east, 112 poles, to H, two buckeyes and white oak, corner to said Johnson's; thence with his line south 51° west, 340 poles, to F, a walnut and two red oaks, corner to said Craig; thence south 61° east, with his line to the beginning, at E, including 535 acres for said Ambrose Walden as his equal two thirds in quality of all that part of said Ambrose Walden's survey of 1333 acres by patent, that is not included in Jacob Johnson's survey, surveyed as the commissioners of Mason allotted and directed; and the remaining 620 acres known in the plat by the letters A, I, H, G, D, is that part of said Walden's survey of 1333 acres that is claimed by a survey of Jacob Johnson, and left undivided by said commissioners.

WHITFIELD CRAIG, *D. S. M. C.*

N. B.—The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Rose, and marked in the plat thus, J; also sold to William Allen, and marked in the plat thus, K; also sold to Mr. Rector, and marked in the plat thus, L. The said Rose, Allen, and Rector are living on the 400 acres in plat marked Lewis Craig, and nearly as the letters point. Surveyed by me,

WHITFIELD CRAIG.

And on the 4th day of August, in the year 1800, the following habere facias was issued, to wit:

[SEAL.] United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lesse of Ambrose Walden, lately in our district court of the United States, for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and William Allen his term yet to come of and in 4 dwelling houses, 20 outhouses, 15 acres of meadow, 100 acres of arable and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

To have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Allen afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Allen are convict, as appears to us of record. Therefore, we command you, that without delay you cause the said John Den to have his possession of his farm aforesaid yet to come of, and in the lands and tenements aforesaid, with the appurtenances; and how you shall execute this writ make appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the 3d Monday in November next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 4th day of August, 1800, and of our independence the 25th.

Teste: THOMAS TUNSTALL, *C. K. D. C.*

This habere facias was returned by A. Walden the 5th of September, 1811.

And on the 14th day of September, 1811, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States, for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and William Allen his term yet to come of and in four dwelling houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Craig and Allen afterwards, to wit, on the day and year aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still doth keep out, and amoved from his said possession, whereof the said Craig and Allen are convict, as appears to us of record. Therefore we command you, without delay, you cause the said John Den to have his possession of his farm aforesaid, yet to come, of and in the lands and tenements aforesaid, with the appurtenances; and how you shall execute this writ make appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the first Monday in November next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 14th day of September, 1811, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

This habere facias was returned by A. Walden the 16th of May, 1812.

And on the 2d day of June, in the year 1812, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States for the Kentucky district, by the judgment of the said court, hath recovered against Lewis Craig and Wm. Allen his term yet to come of and in 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land,

with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid: To have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years, thence next ensuing, and fully to be complete and ended. By virtue of which said *said* demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Craig and Allen afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still doth keep out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Allen are convict, as appears to us of record. Therefore we command you that, without delay, you cause the said John Den to have his possession of his farm aforesaid, his term yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall have executed this writ make appear to the judge of our said district court, at the Capitol, in the town of Frankfort, on the first Monday in August next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed this 2d day of June, A. D. 1812, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

(Marshal's return.)—Stayed by supersedeas—62 miles' travelling.
JNO. A. MITCHELL, *Deputy*.
For ROBERT CROCKETT.

Petition of Craig and Allen.

To the honorable the judges of the circuit court of the United States, for the 7th circuit, for the district of Kentucky, respectfully showeth, your petitioners, Lewis Craig and Wm. Allen:

That at the June term, 1800, a judgment in ejectment was entered against them in the court of the United States for the Kentucky district, in an action of ejectment for 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, 300 acres of wood land, &c., &c., in favor of the lessee of Ambrose Walden, on which, since the last term of the court, an habere facias possessionem has been issued against them. Your petitioners are advised that the issuing of the said habere facias is both irregular and illegal; and they are furnished by their counsel with the following assignment of errors:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811. No execution ought to have issued, after the lapse of a year after

the entry of judgment, without a scire facias. Remington on ejectment, 142.

2dly. The term had expired before the entry of the judgment, of course the judgment itself is impeachable; but it is sufficient for the petitioners that no habere facias can legally issue where the term has expired. Remington, 146–'7, 283, 122.

Your petitioners, therefore, pray that a supersedeas may issue, &c.

J. HUGHES,
For Craig & Allen.

June 6th, 1812.

UNITED STATES OF AMERICA,
Kentucky district, sc:

Issue a supersedeas agreeably to the prayer of the foregoing petition, taking bond and security according to law.

Witness my hand this 6th day of June, 1812.

HARRY INNIS, *J. K. D.*

To Jno. H. Hanna, clerk of the U. S. C. C., &c., &c.

Injunction bond.

Know all men by these presents that we, Lewis Craig, Wm. Allen, and Thos. Bodley, all of the State of Kentucky, are held and firmly bound unto Ambrose Walden, of the State of Virginia, in the sum of one thousand dollars; to the payment of which, well and truly to be made to the said Walden, his heirs, executors, administrators, and assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 8th day of June, 1812.

The condition of the above obligation is such, that, whereas the above bound Craig and Allen have this day obtained a writ of supersedeas to stay all further proceedings upon a writ of habere facias, which issued from the office of the district court of the United States, in and for the Kentucky district, on the 2d day of June, A. D. 1812, wherein John Den, lessee of the above named Ambrose Walden, is plaintiff, and the said Craig and Allen are defendants, for the possession of 4 dwelling houses, 20 out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid; now, if the said Craig and Allen shall prosecute the said supersedeas with effect, or, in case of failure thereof, the said Craig, Allen, and Bodley shall well and truly pay, or cause to be paid, all such damages and costs as may be awarded against the said Craig and Allen, in case the proceeding aforesaid shall be affirmed, then the above obligation to be void, or else to remain in full force and virtue.

[SEAL.]
[SEAL.]
THOS. BODLEY, [SEAL.]
By J. HUGHES, *his attorney in fact.*

Witness, SAMUEL J. M. MAJOR.

with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid: To have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years, thence next ensuing, and fully to be complete and ended. By virtue of which said *said* demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Craig and Allen afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still doth keep out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Allen are convict, as appears to us of record. Therefore we command you that, without delay, you cause the said John Den to have his possession of his farm aforesaid, his term yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall have executed this writ make appear to the judge of our said district court, at the Capitol, in the town of Frankfort, on the first Monday in August next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed this 2d day of June, A. D. 1812, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

(Marshal's return.)—Stayed by supersedeas—62 miles' travelling.

JNO. A. MITCHELL, *Deputy.*
For ROBERT CROCKETT.

Petition of Craig and Allen.

To the honorable the judges of the circuit court of the United States, for the 7th circuit, for the district of Kentucky, respectfully showeth, your petitioners, Lewis Craig and Wm. Allen:

That at the June term, 1800, a judgment in ejectment was entered against them in the court of the United States for the Kentucky district, in an action of ejectment for 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, 300 acres of wood land, &c., &c., in favor of the lessee of Ambrose Walden, on which, since the last term of the court, an habere facias possessionem has been issued against them. Your petitioners are advised that the issuing of the said habere facias is both irregular and illegal; and they are furnished by their counsel with the following assignment of errors:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811. No execution ought to have issued, after the lapse of a year after

the entry of judgment, without a scire facias. Remington on ejectment, 142.

2dly. The term had expired before the entry of the judgment, of course the judgment itself is impeachable; but it is sufficient for the petitioners that no habere facias can legally issue where the term has expired. Remington, 146–'7, 283, 122.

Your petitioners, therefore, pray that a supersedeas may issue, &c.

J. HUGHES,
For Craig & Allen.

June 6th, 1812.

UNITED STATES OF AMERICA,
Kentucky district, sc:

Issue a supersedeas agreeably to the prayer of the foregoing petition, taking bond and security according to law.

Witness my hand this 6th day of June, 1812.

HARRY INNIS, *J. K. D.*

To Jno. H. Hanna, clerk of the U. S. C. C., &c., &c.

Injunction bond.

Know all men by these presents that we, Lewis Craig, Wm. Allen, and Thos. Bodley, all of the State of Kentucky, are held and firmly bound unto Ambrose Walden, of the State of Virginia, in the sum of one thousand dollars; to the payment of which, well and truly to be made to the said Walden, his heirs, executors, administrators, and assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 8th day of June, 1812.

The condition of the above obligation is such, that, whereas the above bound Craig and Allen have this day obtained a writ of supersedeas to stay all further proceedings upon a writ of habere facias, which issued from the office of the district court of the United States, in and for the Kentucky district, on the 2d day of June, A. D. 1812, wherein John Den, lessee of the above named Ambrose Walden, is plaintiff, and the said Craig and Allen are defendants, for the possession of 4 dwelling houses, 20 out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid; now, if the said Craig and Allen shall prosecute the said supersedeas with effect, or, in case of failure thereof, the said Craig, Allen, and Bodley shall well and truly pay, or cause to be paid, all such damages and costs as may be awarded against the said Craig and Allen, in case the proceeding aforesaid shall be affirmed, then the above obligation to be void, or else to remain in full force and virtue.

[SEAL.]
[SEAL.]
THOS. BODLEY, [SEAL.]
By J. HUGHES, *his attorney in fact.*

Witness, SAMUEL J. M. MAJOR.

Supersedeas.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded that, from all further proceedings on a habere facias, issued from the office of the district court of the United States in and for the Kentucky district, on a judgment in that court, wherein John Den, lessee of Ambrose Walden, is plaintiff, and Lewis Craig and Wm. Allen are defendants, which habere facias issued on the 2d day of June, A. D. 1812, against the said Lewis Craig and Wm. Allen for the possession of 4 dwelling houses, 20 out houses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid, you altogether supersede; which habere facias, before the judges of our 7th circuit court of the United States in and for the Kentucky district, is brought to be corrected on the petition of the said Lewis Craig and Wm. Allen, who have given bond and security to prosecute with effect; and, if the proceedings aforesaid should be affirmed, to satisfy and pay all such damages and costs as shall be awarded against them. We command you to give notice to the said Ambrose Walden, that he be before the judges of our said 7th circuit court, at the Capitol, in the town of Frankfort, on the 1st Monday in November next, to shew cause why the said habere facias should not be quashed, and have then there this writ.

In testimony whereof, Jno. Marshall, esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return.

Executed 17th June, 1812; 62 miles travelling.

JOHN A. MITCHELL, *Deputy.*
For R. CROCKETT.

And afterwards, to wit, at the May term of said 7th circuit court, in the year 1813, the following order was made herein, to wit:

The court being now sufficiently advised of and concerning the premises, do order that the executions issued herein be quashed, they having been issued after the expiration of the demise in the declaration, and that the said plaintiff recover against the lessor of the defendant their costs in this behalf expended.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1817, to wit, at a continuation of said term, on the 5th of August next ensuing, the following order was made, to wit:

This day came the plaintiff in the foregoing suit, and moved the court for a rule on the defendants aforesaid, to show cause, on the 6th day of the next term of this court, why the demise in the declaration should not be extended.

And afterwards, to wit, on the 22d day of May, in the year 1819, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas Jno. Den, lessee of Ambrose Walden, lately in our district court of the United States for the district of Kentucky, has, by judgment of the said court, recovered against Lewis Craig and Wm. Allen his term yet to come of and in 4 dwelling houses, 20 out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid; therefore we command you that, without delay, you cause the said John Den to have possession of the land aforesaid, with the appurtenances; and how you shall have executed this writ return to us on the first Monday in July next.

In testimony whereof, John Marshall, esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 22d day of May, 1819, and of our independence 43d.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

This execution was not taken out of the office.

And afterwards, to wit, at the May term of said court, in the year 1824, (until which time the motion to extend the demise in the declaration was continued,) the following order was made herein, to wit:

Order extending demise.

On motion of the plaintiff, by his attorney, leave is given to amend the declaration by extending the demise to fifty years, which is done accordingly, but execution not to go out before the first day of March, next.

And afterwards, to wit, on the 30th day of May, 1835, the following habere facias was issued, to wit:

JOHN DEN, on demise of Ambrose Walden,
against
LEWIS CRAIG and WILLIAM ALLEN.

Execution dated 30th May, 1835.

His term yet to come of and in four dwelling houses, twenty out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

The marshal will not deliver to the plaintiff, upon this execution, any land outside of the locator's part, nor any land within which is enjoined by the order of December 2d, 1834.

This execution was made returnable to 1st Monday in August, 1835, and delivered to Walden, but never returned to the office.

And afterwards, to wit, on the 18th day of November, 1836, the following habere facias was issued, to wit:

JOHN DEN, on the demise of Ambrose Walden, against WILLIAM ALLEN, Lewis Craig, the other defendant having departed this life.

Execution dated 18th November, 1836.

His term yet to come, and in 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid. The marshal will deliver only so much of the land to the plaintiff in this writ as lies within the following boundary: Beginning at a stake six feet north of a white oak tree, corner of Walden, as last surveyed, represented at 8 in the connected plat, and running thence with that line S. 37° 25′ E., 297 poles, to a stake in a line of Walden's original survey in Tibbs' land at *f*; thence with that line S. 20° W., 288 poles, to a stake in a lane at the intersection of the decreed line, 82 poles, N. 29° E. from said Walden's original corner, near Proctor's, at G; thence with the decreed line S. 52° 35 W., 95 poles, to a stake in another of said Walden's old lines in cleared land at *h*; thence with the old line N. 70° W., 220 poles, to a stake in another of the decreed lines; thence with that line N. 37° 25 W., 273 poles, to two buckeyes and sugar tree at 7; and thence N. 53° 35′ E., 461 poles and 21 links, to the beginning, containing by said survey 1,144 acres 2 roods and 22 poles.

This execution was made returnable to February 7, rules 1837, delivered to John Walden, and never returned.

And afterwards, to wit, at the November term, 1836, of said court, to wit, the 19th of November, came the parties, by their attorneys; and the defendant, by his attorney, moves the court to quash the execution issued in this cause, on the following grounds:

1st. That there is no legal or valid judgment upon which the execution could regularly issue.

2d. That the judgment, such as it is, was rendered more than 20 years ago, and it was irregular and illegal to issue any execution on it, without a scire facias first sued out against the defendant, &c.; L. Craig is dead, and no execution could regularly issue against the survivor without revival.

4th. That the execution illegally and irregularly issued on a judgment inoperative, and which from lapse of time gave no right to the clerk, without being revived, to issue the execution, or any other.

And the arguments of counsel being heard, but the court not being advised, took time, &c.

And afterwards, to wit, at a subsequent day of the term aforesaid, to wit, on the 21st of November, 1836, the court being sufficiently advised of and concerning the defendant's motion to quash the execution in this case, do consider that the habere facias which issued in this case on the

18th November inst., be, and the same is hereby quashed, and that the defendants in said execution recover of the lessor of the plaintiff, Ambrose Walden, their costs herein expended.

On the trial of this motion the following bill of exceptions was tendered to the court, signed, and ordered to be entered, which is as follows, to wit:

Be it remembered, that on the above motion being made in court by the counsel of the plaintiff therein, the counsel of Walden objected to said motion being made, and to their being then received or heard by the court, on the following grounds:

1st. Because there had been no notice given to the said Walden, his agent, or attorney.

2d. Because the court having, on the day before the making of the motion, disposed of all the business before it, mentioned on the adjournment that the court would meet next day for the purpose of hearing read, and signing the orders, and the circuit judge had accordingly left, and was not then on the bench.

On the hearing of these objections, it appeared on the first ground that the counsel of Walden had, before the issuing of the said execution, suggested the death of the said Craig, and caused the same to be recited in the execution, and his death was in no wise controverted by either party.

And on the other ground of objection, it appeared that the clerk had, on the dissolution of the injunction on the — day of the present term, by which the said Walden had been enjoined from suing out execution on the judgment in ejectment, informed the counsel of Walden that he would refuse to issue a writ of habere facias, unless he was ordered or instructed to do so by the court, and requested him to make his motion for that purpose within the term; but that he had afterwards, upon receiving a bond of indemnity from the agent of Walden, and three days before the making these motions, informed the counsel of both parties that he would, in consequence thereof, issue the execution. That before the adjournment of the court, the day before the motion was made, when the business was disposed of, it was mentioned from the bench that the court would adjourn to meet next day, to hear and sign the orders; upon which the counsel of Walden inquired whether any other business would be done; to which the district judge, who it was understood would alone constitute the court next day, answered that he hoped not; to which the counsel of the plaintiff in these motions answered, that he did not know that he would have any business, but that if he should have any motion to make, he would certainly make it; upon which the court adjourned to the usual hour next day.

It appeared from the statement of the counsel for the plaintiff in the motion, whose clients had not attended, and were absent, that he had understood, when it was said the bond of indemnity was given, that the clerk intended to issue, and the counsel or agent of Walden intended to take out, the execution; yet he did not know or believe, until the night after the adjournment of the court, on the day before the making

of the motion, that the execution had issued; and that he then informed the counsel of Walden that he would, on the next day, make the motion in court. On the above state of case, the court was of opinion, on the first ground, that no other notice of the motion was necessary. And on the second ground of objection, that it did not appear that the counsel of the plaintiff in the motion had sought this occasion, when the court was constituted of the district judge only, to make said motion, and that the apparent necessity for the hearing thereof by the court, when not full, was not caused by him, either intentionally or otherwise.

And thereupon the court overruled the objections of the counsel of Walden to the court's receiving and hearing said motion, and decided that the motion might proceed.

On the hearing of the motion, the records, orders, and proceedings in the action of ejectment in this suit, and of the suits in chancery, and of the several bills filed therein, and orders and decrees made in the several cases of Bodley, &c. vs. Walden, and the order in this case extending the demise in the declaration, and the record of the case, of the rule obtained, and motions made in said action of ejectment to have the said order, allowing the said demise to be extended, quashed, and set aside, and the proceedings and orders of the court in said rule and motion were altogether with the record of the habere facias which this motion was made to have quashed, referred to and given in evidence, and made part hereof, so that the whole may appear in any transcript of the record of this motion which may be made for the purpose of a writ of error, or any other purpose.

On the above matter appearing in the record, and the fact of the death of the said Lewis Craig before the issuing of the said writ of habere facias, which was admitted by the parties, the court, on the grounds filed, and constituting a part of the record of this case, sustained the said motion, and quashed and set aside said writ of habere facias.

To which several decisions of the court above stated the counsel of Walden excepted, and prays this his bill of exceptions may be signed, sealed, and enrolled; and the same is allowed.

THOMAS B. MONROE. [SEAL.]

A copy.—Attest:

JOHN H. HANNA, *C. C C. K. D.*

The transcript of the record of the suit of John Den, on the demise of A. Walden, against Craig and Rutter, is as follows, to wit:

Copy—record—A. Walden against Craig and Rutter.

Pleas before the honorable Harry Innis, judge of the district court of the United States of America, in and for the Kentucky district, holden at the Capitol, in the town of Frankfort, on the 19th day of June, in the year 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, holden in and for the district of Kentucky, in the month of March, in the year of our Lord 1797, came John Den, lessee

of Ambrose Walden, by his attorney, and filed the following declaration in ejectment, to wit:

KENTUCKY DISTRICT, *to wit:*

John Den complains of Richard Fen, in custody, &c. For that, to wit, that whereas Ambrose Walden, on the 15th day of August, in the year of our Lord 1789, at Mason county, in Kentucky district aforesaid, had demised and granted, and to farm let to the said John Den, four dwelling houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in Mason county aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the date of the said lease unto the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Richard Fen afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements and premises aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet expired, and kept out, and still keeps out, the said John Den, so ejected, drove out, and amoved from his said possession; and then and there did other injuries to him, against the peace, and to the damage of the said John Den sixty dollars; and thereupon he brings suit, &c.

WM. CLARK, *for plaintiff.*
JOHN DOE.
RICHARD ROE,
Pledges, &c.

I am informed that you are in possession of, or claim title to, the premises in the declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as casual ejector, and having no claim or title to the premises, do advise you to appear on the first day of the next March term of the court of the United States, for the district aforesaid, by some attorney of that court, and then and there, by rule of said court, cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession. Your loving friend,

RICHARD FEN.

28th January, 1797.

BOURBON COUNTY, *sct:*

On the 22d day of February, 1797, came Thomas McGlanton before me, the subscriber, one of the justices of the peace for said county, and made oath, on the 17th day of this present month, February, he did deliver a copy of the foregoing declaration and notice on the premises in the foregoing declaration mentioned, unto Abraham Shockey, he be-

ing tenant in possession of the premises in the said declaration mentioned; and that he also, on the said day, did deliver another copy of the said declaration and notice to the wife of Charles Rutter, one other tenant in possession of another part of the premises in the said declaration mentioned; and also, on the same day, did deliver another copy of the said declaration and notice to the wife of William Allen, one other tenant in possession of another part of the premises in the said declaration of ejectment mentioned. And this deponent further saith, that he told them all, severally, that it was a declaration in ejectment, and, unless they did appear by some attorney of the United States for said district, the next ensuing term, there would be judgment thereupon against the defendant by default, and they would be turned out of possession, or words to that effect.

WILL. NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made herein, to wit:

It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action—

It is therefore ordered by the court, that the said defendants appear here on the first day of the next term, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto, or, on failure thereof, (they severally having notice of this order,) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff.

And afterwards, to wit, at the March term of said court, in the year 1798, the following order was made herein, to wit:

On motion, it is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, Charles Rutter, be made defendants to this suit instead of the casual ejector, Richard Fen, and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein mentioned, and plead thereto not guilty, and agree to insist upon the title only at the trial. And it is further ordered, that if, upon the trial of the issue, a verdict should be given for the defendants, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself doth not pay them.

Whereupon the said defendants, by their attorney, confess the lease, entry, and ouster in the declaration supposed, and agree to insist upon the title only at the trial; and the said defendants come and defend the force and injury, when and where, &c., and say they are in no wise guilty of the trespass in ejectment in manner and form as the plaintiff against him hath complained; and of this they put themselves upon the country; and the plaintiff doth so likewise. Therefore let a jury come, &c.

And it is further ordered, that Miles W. Conway do go on the land in controversy between the parties on the day of next, if fair, if not, then on the next fair day, and there lay off the same as either party shall direct, having regard to all deeds and other evidence that may be produced, and report all matters of fact specially, and return four fair plats and certificates thereof to the clerk's office of this court before the day of hearing; and the sheriff of Mason county is directed to attend the said surveyor to remove force, should any be offered; and further proceedings are continued until the next court.

And afterwards, to wit, at the June term of the said court, to wit, on the 19th day of June, A. D. 1800, the following special case was submitted to the court, by consent of the parties herein, by their attorneys, to wit:

The tract of land marked on the plat by the letters A, B, C, D, was duly granted to the said Walden, lessor of the plaintiff, by patent from the Commonwealth of Virginia, bearing date the 21st day of November, 1786.

The said Walden and Simon Kenton executed the agreement marked A, respecting the locating of said lands; the said agreement is made a part of this case.

The defendants are in possession of that part of the tract marked on the plat by the letters E, F, G, C, and claim the said part of the said tract of land, under the said agreement A, and the endorsements thereon, and a division thereof made, as certified by the report B; which report and endorsement on said agreement is also made a part of this case.

If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land marked on the plat, as aforesaid, by the letters E, F, G, C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendants.

WM. CLARKE, *Attorney for plaintiff.*
THOS. TODD, *Attorney for defendant.*

And the court, having fully considered and understood the said case, is of opinion that the legal title to the said part of the said tract of land, marked on the plat E, F, G, C, is in the plaintiff, and was on the day of filing the said declaration in this suit.

It is therefore considered by the court that the plaintiff recover against the said defendants, Lewis Craig and Charles Rutter, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendants, in mercy, &c.

And on motion of the plaintiff, by his attorney, the United States writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of the terms aforesaid, returnable to the next court.

The following are the exhibits made part of the agreed case:

MASON COUNTY, *sct:*

We, the commissioners, appointed by the worshipful the court of Mason aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth and non-residents, and being called on to divide a tract of land containing 1333 acres, patented in the name of Ambrose Walden, between him, the said Ambrose, and Lewis Craig, assignee of Craig and Johnson, assignee of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig as aforesaid, proceeded on this day to divide the same in the said proportions, that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit: Beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence N. 22 east, with the old line, 155 poles, to two white ashes and sugar tree; thence N. 61° W., 329 poles, to a walnut and two red oaks, in Johnson's line; thence S. 51° west, with Johnson's line, 168 poles, to three white oaks in Jno. Walden's line; thence to the beginning, containing 320 acres: To have and to hold the said quantity of 320 acres to him, the said Lewis Craig, his heirs and assigns, forever, free and clear from the let, molestation, and hindrance of him, the said Ambrose Walden, his heirs, &c., forever; and to hold to him, the said Lewis Craig, his heirs, &c., in severalty, and no longer subject to the claim of him, the said Walden.

Also divided the said tract of land as follows: Beginning at two white oaks and sugar tree, in John Walden' line, and corner to Lewis Craig; thence north 22 east, 375 poles, to a red oak and honey locust; thence north 68 west, 260 poles, to a white oak and box elder in Jacob Johnson's line; thence, with said line, south 39 east, 112 poles, to two buckeyes and white oak, east corner to said Johnson's; thence south 51 west, 340 poles, to a walnut and two red oaks, corner to Lewis Craig; thence south 61 east, 329 poles, to the beginning. To have and to hold the said tract of land, containing 640 acres, to him, the said Ambrose Walden, his heirs, &c., in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns forever.

And we, the said commissioners, do certify and declare, that the residue of the said survey in the name of the said Ambrose Walden is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided; but is, on that account, left in tenancy in common between the said Ambrose Walden and the said Lewis Craig, and subject to a future division, as the event of the said interference may justify.

In witness whereof, we, the said commissioners, have hereunto set our hands, and affixed our seals, this 10th day of February, 1794.

DAVID MORRIS, [L. S.]
D. V. PAYNE. [L. S.]

Signed, sealed, and delivered, before—

MASON COUNTY, *sct:* *April court*, 1797.

This division of lands between Walden and Craig was returned by the commissioners, and ordered to be recorded.

Teste: THOS. MARSHAL, Jr., *M. C.*

B.

Articles of agreement, made and done this first day of May, 1780, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Caroline county, Virginia, witnesseth: that the said Simon Kenton doth bind himself to locate 10,000 acres for the said Ambrose Walden in the district of Kentucky; in consideration of which the said Ambrose Walden doth bind himself, his heirs, and assigns, to convey a proper deed of one-third of the said ten thousand acres so located unto the aforesaid Simon Kenton, respect being held to the quality, and other local advantages; and lastly, both parties bind themselves to the performance of the premises, under the penalty of fifty thousand pounds.

his
SIMON + KENTON, [L. S.]
mark.
AMBROSE WALDEN. [L. S.]

Signed, sealed, and delivered, in presence of—

AGNUS CAMERON,
JOSEPH KATRITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest, of the within article, to John Craig and Robert Johnson, this 24th day of April, 1787.

SIMON KENTON.

JOHN WILSON, JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig. Witness my hand, May 18th, 1791.

ROBERT JOHNSON.

TOLIVER CRAIG.

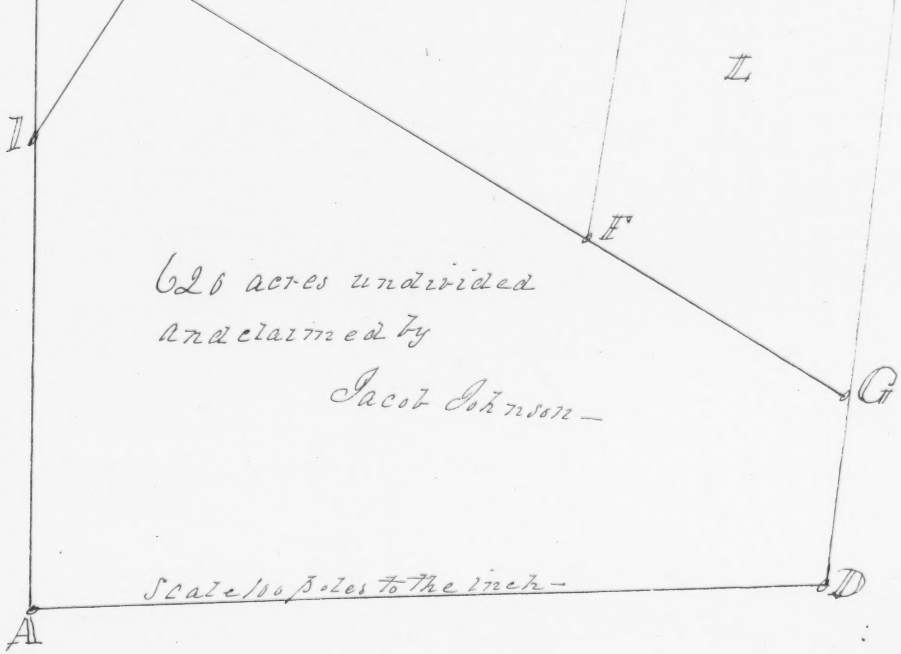
We assign to Lewis Craig the third part of the three thousand acre entry in the name of Walden, and one-third of three thousand acre entry in the name of John Taylor, and one-third of one thousand five hundred acres in the name of William Nelson. John Craig's interest is only given up. December 28th, 1793.

ROBERT JOHNSON,
Trustee to John Craig.
ELIJAH CRAIG,
Trustee to John Craig.

[For plat see original.]

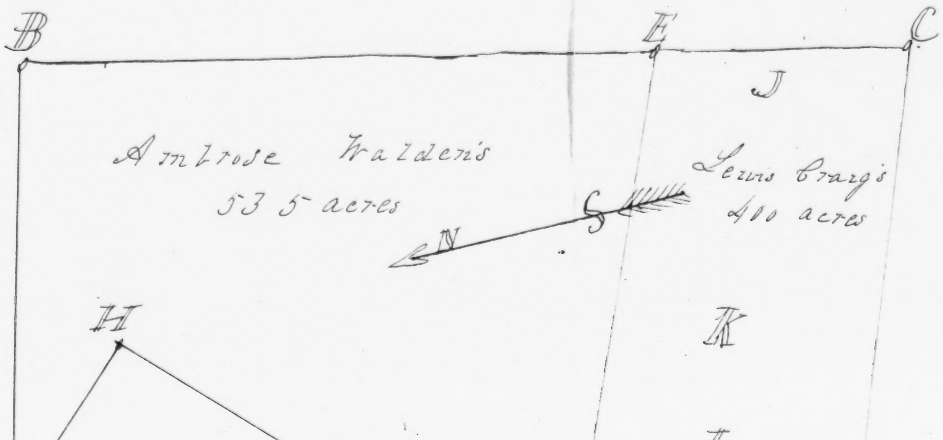
The whole of this land is now claimed and contended for [by] Thos. Bodley and Jas. Hughes. February 10th, 1794.

[REC. CLXXX, D. T. 1847.]—15



626 acres undivided
and claimed by
Jacob Johnson—

Scale 100 Poles to the inch—


B
E
C
J
Ambrose Waldens
535 acres
Lewis Craigs
400 acres
N
H
K

Surveyed for Ambrose Walden 1555 acres of land in Mason county, and on the waters of Johnson's fork of Licking, and bounded as follows, viz: Beginning at a buckeye and hoop ash stump, shewn for Walden's most northwestwardly corner; thence S. 68° E., 520 poles, to B, two red oaks and honey locust; thence S. 22° W., 530 poles, to C, an ash, Spanish oak, mulberry, and buckeye, corner to John Walden's survey; thence with his line N. 61 W., 524 poles, to D, a hickory, red oak, and white oak; thence N. 22° E., 424 poles, to the beginning. Also divided the above land as follows, to wit: beginning at C, an ash, Spanish oak, mulberry, and buckeye; thence N. 22° E., with Walden's line, 155 poles, to E, two white ashes and sugar tree, corner to Ambrose Walden's land; thence N. 61° W., 329 poles, to F, a walnut and two red oaks in Jacob Johnson's line; thence with the same S. 61° east, to the beginning at C, including 400 acres for Lewis Craig as his equal third part, in quality, of that part of Ambrose Walden's survey of 1333 acres by patent, that is not included by Jacob Johnson's survey, surveyed as the commissioners of Mason county allotted and directed. Also divided the above land as follows, to wit: beginning at E, two white ashes and sugar tree, corner to Lewis Craig's 400 acres; thence N. 22° E., 375 poles, to B, a red oak and honey locust; thence N. 68 W., 260 poles, to I, a white oak and box elder in Johnson's line; thence with the same S. 90° E., 112 poles, to H, two buckeyes and white oak, corner to said Johnson; thence with his line S. 51° W., 340 poles, to F, a walnut and two red oaks, corner to said Craig; thence S. 61° east, with his line to the beginning at E, including 535 acres for said Ambrose Walden, as his equal two-thirds in quality of all that part of said Ambrose Walden's survey of 1333 acres, by patent, that is not included in Jacob Johnson's survey, surveyed as the commissioners of Mason allotted and directed; and the remaining 620 acres, known in the plat by the letters A, I, H, G, D, is that part of said Walden's survey of 1333 acres that is claimed by a survey of Jacob Johnson's, and left undivided by said commissioners.

WHITFIELD CRAIG, *D. S. M. C.*

N. B. The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Rose, and marked in the plat thus, J; also sold to William Allen, and marked in the plat thus, K; also sold to Mr. Rector, and marked in the plat thus, L. The said Rose, Allen, and Rector are living on the 400 acres in plat marked Lewis Craig, and nearly as the letters point. Surveyed by me.

WHITFIELD CRAIG.

And on the 4th day of August, in the year 1800, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and

Charles Rutter, his term yet to come of and in four dwelling houses, twenty out-houses, fifteen acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Craig and Rutter afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Rutter are convict, as appears to us of record.

Therefore, we command you that, without delay, you cause the said John Den to have his possession of his term aforesaid yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall execute this writ make it appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the 3d Monday in Nov. next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 4th day of August, 1800, and of our independence the 25th.

Teste: THOS. TUNSTALL, *C. K. D. C.*

This habere facias was delivered to A. Walden, and returned by him on the 5th day of September, 1811.

And on the 14th of Sept., 1811, the following habere facias was issued, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and Charles Rutter his term yet to come of and in four dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig

and Rutter afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den from his said farm, his said term not being yet ended, and kept out, and still doth keep out the said John, so ejected, drove out, and amoved from his said possession; whereof the said Craig and Rutter are convict, as appears to us of record.

Therefore we command you that, without delay, you cause the said John Den to have his possession of his farm aforesaid yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall execute this writ make it appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the first Monday in November next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 14th day of September, 1811, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

This execution was returned by A. Walden on the 16th May, 1812.

And on the second day of June, in the year 1812, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States for the Kentucky district, and by the judgment of the said court, hath recovered against Lewis Craig and Charles Rutter his term yet to come of and in four dwelling-houses, 20 outhouses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns. from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Rutter afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den; ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still doth keep out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Rutter are convict, as appears to us of record.

Therefore we command you that, without delay, you cause the said John Den to have his possession of his farm aforesaid, his term yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall have executed this writ make appear to the

judge of our district court, at the Capitol, in the town of Frankfort, on the first Monday in August next; and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this second day of June, A. D. 1812, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

Marshal's return.

Stayed by supersedeas; 62 miles travelling.

JOHN A. MITCHELL, *Deputy.*
For R. CROCKETT, *M. K. D.*

Petition of Craig and Rutter.

To the honorable the judges of the circuit court of the United States, for the 7th circuit, for the district of Kentucky:

Respectfully sheweth, your petitioners, Lewis Craig and Charles Rutter, that at the June term, 1800, a judgment in ejectment was entered against them in the court of the United States for the Kentucky district, in an action of ejectment brought by the lessee of Ambrose Walden for 4 dwelling houses, &c., &c.; on which, since the last term of the court, an habere facias possessionem has been issued against them. Your petitioners are advised that the issuing the said habere facias is both irregular and illegal, and they are furnished by their counsel with the following assignment of errors:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811. No execution ought to have issued after the lapse of a year after the entry of judgment without a scire facias. Remington on ejectment, 142.

2d. The term had expired before the judgment was entered; of course the judgment itself is impeachable; but it is sufficient for the petitioners that no habere facias can legally issue where the term has expired. Remington, 146–'7, 283, 122. Your petitioners therefore pray that a supersedeas may issue, &c., &c.

J. HUGHES, *for Craig and Rector.*
(*Called in the proceedings Rutter.*)

UNITED STATES OF AMERICA, *Kentucky district, sct:*

Issue a supersedeas agreeably to the foregoing petition, taking bond and security according to law.

Witness my hand, as judge of said district, this 6th day of June, 1812.

HARRY INNIS.

To JOHN H. HANNA, *Clerk U. S. C. C., &c., &c.*

Injunction bond.

Know all men by these presents, that we, Lewis Craig, Charles Rutter, and Thomas Bodley, all of the State of Kentucky, are held and firmly bound unto Ambrose Walden, of the State of Virginia, in the

sum of one thousand dollars; to which payment, well and truly to be made to the said Walden, his heirs, executors, administrators, or assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 8th day of June, A. D. 1812.

The condition of the above obligation is such, that whereas the above bound Craig and Rutter have this day obtained a writ of supersedeas to stay all further proceedings upon a writ of habere facias which issued from the office of the district court of the United States, in and for the Kentucky district, on the 2d day of June, 1812, wherein Ambrose Walden, lessee of the above named Ambrose Walden, is plaintiff, and the said Craig and Rutter are defendants, for the possession of 4 dwelling houses, 20 out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid; now, if the said Craig and Rutter shall prosecute the said supersedeas with effect, or, in case of failure thereof, the said Craig, Rutter, and Bodley shall well and truly pay, or cause to be paid, all such damages and costs as shall be awarded against the said Craig and Rutter in case the proceedings aforesaid shall be affirmed, then the above obligation to be void, or else to remain in full force and virtue.

Witness—SAM'L J. M. MAJOR. [SEAL.]

[SEAL.]

THOMAS BODLEY, [SEAL.]

By J. HUGHES, *his attorney in fact.*

Supersedeas.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded that, from all further proceedings on a habere facias, issued from the office of the district court of the United States, in and for the Kentucky district, on a judgment in that court, wherein John Den, lessee of Ambrose Walden, is plaintiff, and Lewis Craig and Charles Rutter are defendants, which habere facias issued on the 2d day of June, A. D. 1812, against the said Craig and Rutter, for the possession of 4 dwelling houses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid, you altogether supersede; which habere facias before the judges of our 7th circuit court of the United States, in and for the Kentucky district, is brought to be corrected on the petition of the said Lewis Craig and Charles Rutter, who have given bond and security to prosecute with effect, and if the proceedings aforesaid should be affirmed, to satisfy and pay all such damages and costs as shall be awarded against them. We command you to give notice to the said Ambrose Walden, that he be before the judges of our said 7th circuit court, at the Capitol, in the town of Frankfort, on the first Monday in November next, to

shew cause why the said habere facias should not be quashed, and have then there this writ.

In testimony whereof John Marshall, esq., chief justice of the said United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return.

Executed 17th June, 1812; 62 miles travelling.

JOHN A. MITCHELL, *Deputy.*
For ROBERT CROCKETT, *M. K. D.*

And afterwards, to wit, at the May term of said court, in the year 1813, the following order was made herein, to wit:

The court being now sufficiently advised of and concerning the premises, do order that the executions issued herein be quashed, they having been issued after the demise in the declaration, and that the said plaintiffs recover, against the lessor of the defendant, their costs in this behalf expended.

And afterwards, to wit, at the May term said of court, in the year 1817, to wit, at a continuation of said term, on the 5th of August next ensuing, the following order was made, to wit:

This day came the plaintiff in the foregoing suit, and moved the court for a rule on the defendants aforesaid, to shew cause, on the 6th day of the next term of this court, why the demise in the declaration should not be extended.

And afterwards, to wit, on the 22d day of May, in the year 1819, the following habere facias was issued, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States, for the district of Kentucky, has, by a judgment of the said court, recovered against Lewis Craig and Charles Rutter his term yet to come of and in four dwelling houses, twenty out houses, fifteen acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

Therefore, we command you that, without delay, you cause the said John Den to have possession of the land aforesaid, with the appurtenances; and how you shall have executed this writ return to us on the 1st Monday in July next.

In testimony whereof, John Marshall, esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 22d day of May, 1819, and of our independence 43d.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

This execution was not taken out of the office.

And afterwards, to wit, at the May term of said court, in the year 1824, (until which time the motion to extend the demise in the declaration was continued,) the following order was made herein, to wit:

Order extending demise.

On motion of the plaintiff, by his attorney, leave is given to amend the declaration, by extending the demise to fifty years, which is done accordingly, but execution not to go out before the first day of March next.

And afterwards, to wit, on the 30th day of May, 1835, the following habere facias was isued, to wit:

JOHN DEN, on demise of Ambrose Walden,
against
LEWIS CRAIG and Charles Rutter.

Execution dated 30th May, 1835.

His term yet to come of and in 4 dwelling houses, 20 out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

The marshal will not deliver to the plaintiff, upon this execution, any land outside of the locator's part, nor any land within which is enjoined by the order of December 2d, 1834.

This execution was made returnable to 1st Monday in August, 1835, and delivered to Walden, but never returned to the office.

And afterwards, to wit, on the 18th day of November, 1836, the following habere facias was issued, to wit:

JOHN DEN, on the demise of Ambrose Walden,
against
CHARLES RUTTER, Lewis Craig, the other defendant having departed this life.

Execution dated 18th November, 1836.

His term yet to come [of] and in 4 dwelling houses, 20 out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

The marshal will deliver only so much of the land to the plaintiff in this writ as lies within the following boundary: Beginning at a stake six feet north of a white oak tree, corner of Walden, as last surveyed, represented at 8 on the connected plat, and running thence with that line S. 37° 25 E., 297 poles, to a stake in a line of Walden's original survey, in Tibb's lane at *f*; thence with line S. 20° W., 288 poles, to a

stake in a lane at the intersection of the decreed line, 82 poles, N. 20° E, from said Walden's original corner near Proctor's, at G; thence with the decreed line S. 52° 35′ W., 95 poles, to a stake in another of said Walden's old lines in cleared land at N; thence with the old line N. 70° W., 220 poles, to a stake i, in another of the decreed lines; thence with that line N. 37° 25′ W., 273 poles, to two buck eyes and sugar tree at 7; and thence N. 53° 35′ E., 461 poles and 21 links, to the beginning; containing by said survey 1,144 acres, 2 roods, and 22 poles.

This execution was made returnable to February rules, 1837, delivered to John Walden, and never returned.

And afterwards, to wit, at the November term, 1836, of said court, to wit, the 19th day of November, came the parties, by their attorneys; and the defendant, by his attorney, moves the court to quash the execution issued in this case, on the following grounds:

1st. That there is no legal or valid judgment upon which the execution could regularly issue.

2d. That the judgment, such as it is, was rendered more than 20 years ago, and it was irregular and illegal to issue any execution on it, without a scire facias first sued out against the defendants, &c.; L. Craig is dead, and no execution could regularly issue against the survivor without revival.

4th. That the execution illegally and irregularly issued on a judgment inoperative, and which, by lapse of time, gave no right to the clerk, without being revived to issue the execution, or any other.

And the argument of counsel being heard, but the court not being advised, took time, &c.

And afterwards, to wit, at a subsequent day of the term aforesaid, to wit, on the 21st of November, 1836, the court being sufficiently advised of and concerning the defendant's motion to quash the execution in this case, do consider that the habere facias, which issued in this case on the 18th November inst., be and the same is hereby quashed, and that the defendants in said execution recover of the lessor of the plaintiff, Ambrose Walden, their costs herein expended.

On the trial of this motion, the following bill of exceptions was tendered to the court, signed and ordered to be entered, which is as follows, to wit:

Be it remembered, that, on the above motion being made in court by the counsel of the plaintiff therein, the counsel of Walden objected to said motion being made, and to their being then received or heard by the court, on the following grounds:

1st. Because there had been no notice given to the said Walden, his agent, or attorney.

2d. Because the court having, on the day before the making of the motion, disposed of all the business before it, mentioned on the adjournment that the court would meet next day for the purpose of hearing read, and signing, the orders; and the circuit judge had accordingly left, and was not there on the bench.

On the hearing of these objections, it appeared, on the first ground,

that the counsel of Walden had, before the issuing of the said execution, suggested the death of the said Craig, and caused the same to be recited in the execution, and his death was in no wise controverted by either party.

And on the other ground of objection, it appeared that the clerk had, on the dissolution of the injunction, on the day of the present term, by which the said Walden had been enjoined from suing out [execution] on the judgment in ejectment, informed the counsel of Walden that he would refuse to issue a writ of habere facias unless ordered or instructed to do so by the court, and requested him to make his motion for that purpose within the term; but that he had afterwards, upon receiving a bond of indemnity from the agent of Walden, and three days before the making of these motions, informed the counsel of both parties that he would in consequence thereof issue the execution.

That before the adjournment of the court, on the day before the motion was made, when the business was disposed of, it was mentioned from the bench that the court would meet next day to hear and sign the orders; upon which the counsel of Walden inquired whether any other business would be done; to which the district judge, who it was understood would alone constitute the court next day, answered, that he hoped not; to which the counsel of the plaintiff in these motions answered, that he did not know that he would have any business, but that if he should have any motion to make he would certainly make it; upon which the court adjourned to the usual hour next day.

It appeared, from the statement of the counsel for the plaintiff in the motion, whose clients had not attended, and were absent, that he had understood, when it was said that the bond of indemnity was given, that the clerk intended to issue, and the counsel or agent of Walden intended to take out, the execution; yet he did not know or believe, until in the night after the adjournment of the court, on the day before the making of the motion, that the execution had issued, and that he then informed the counsel of Walden that he would, on the next day, make the motion in court. On the above state of case the court was of opinion, on the first ground, that no other notice of the motion was necessary.

And on the second ground of objection, that it did not appear that the counsel of the plaintiff had sought this occasion, when the court was constituted of the district judge only, to make said motion, and that the apparent necessity for the hearing thereof by the court, when not full, was not caused by him, either intentionally or otherwise. And thereupon the court overruled the objections of the counsel of Walden to the court's receiving and hearing said motion, and decided that the motion might proceed.

On the hearing of the motion the records, orders, and proceedings in the action of ejectment in this suit, and of the suits in chancery, and several bills filed therein, and orders and decrees made in the several cases of Bodley, &c., vs. Walden, and the order in this case extending the demise in the declaration, and the record of the case, of the rule obtained, and motions made in said action of ejectment to have the said

order allowing the said demise to be extended quashed and set aside, and the proceedings and orders of the court in said rule and motion, were altogether, with the record of the habere facias, which this motion was made to have quashed, referred to, and given in evidence, and made part hereof, so that the whole may appear in any transcript of the record of this motion which may be made for the purpose of a writ of error, or any other purpose.

On the above matter appearing in the record, and the fact of the death of the said Lewis Craig before the issuing of the said writ of habere facias, which was admitted by the parties, the court, on the grounds filed, and constituting a part of the record of this [case,] sustained the said motion, and quashed and set aside said writ of habere facias.

To which several decisions of the court, above stated, the counsel of Walden excepted, and prays that this his bill of exceptions may be signed, sealed, and enrolled; and the same is allowed.

THOMAS B. MONROE. [SEAL.]

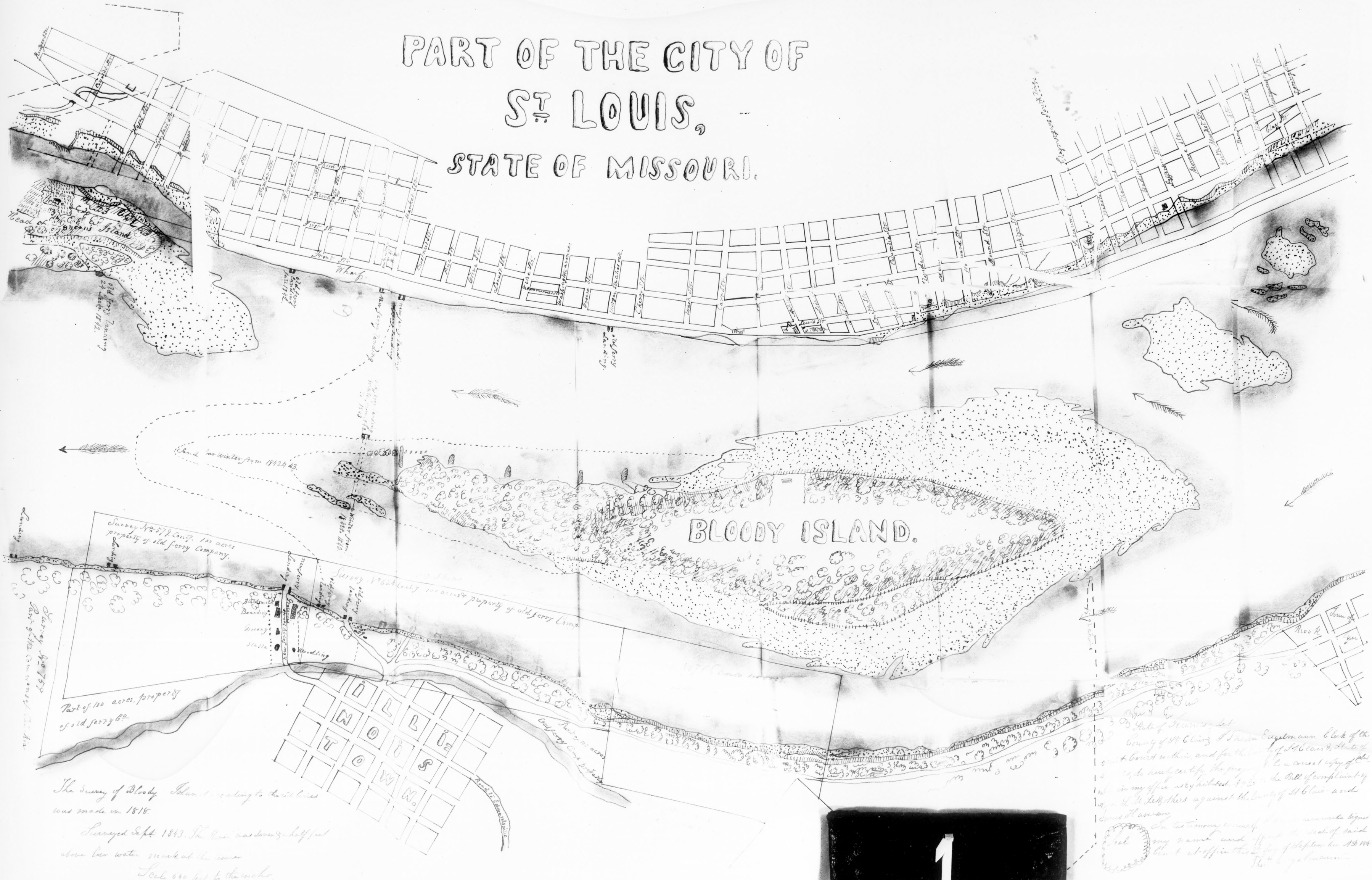
A copy. Attest: JOHN H. HANNA, *C. C. C. K. D.*

The following is a copy of the appeal bond:

Know all men by these presents, that we, Richard Walden, John Carter and Judith Carter, his wife, late Judith Walden, John Walden, and William Walden, heirs and representatives of Ambrose Walden, deceased, and Edward M. Blackburn, their security, are held and firmly bound unto Harry J. Bodley, William S. Bodley, William H. Hurst and Ann J., his wife, E. B. Owsley and Catharine E., his wife, John F. Bodley, Thomas Bodley, Charles S. Bodley, Ellen P. Bodley, and George J. Bodley, heirs and representatives of Thomas Bodley, deceased, and Harry J. Bodley, administrator of Thomas Bodley, deceased, Samuel Garrison and Jane, his wife, and William L. Pogue, heirs and representatives of Robert Pogue, deceased, Eli M. Pogue, Elizabeth J. Pogue, Franklin Pogue, Amanda C. Pogue, and Maria Edwin Pogue, heirs of Edwin P. Pogue, who was heir of Robert Pogue, deceased, Benjamin Umstead, Robert Blair, and John N. Proctor, E. M. Pogue, Samuel Y. Garrison and wife, William L. and E. P. Pogue, John Mackey, John and Lindsey Pogue, heirs of Robert Pogue, deceased, Daniel Clark, Susan Sumrall, Thomas Clark, Mary H. McMillan, Susan Lacy and Thomas Lacy, heirs of B. Clark, deceased, Alfred Duncan, Jane Duncan, James Duncan, James Lindsey and Nancy, his wife, heirs of David Duncan, deceased, Larkin and Eliza Landridge, Robert Taylor, sr., Robert Taylor, jr., and John D. Taylor, heirs of Drake, deceased, in the just and full sum of one thousand dollars; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 18th day of June, A. D. 1847.

The condition of the above obligation is such, that whereas the above bound Richard Walden, &c., have prayed for and obtained an appeal from a decree of the 8th circuit court of the United States, in and for

PART OF THE CITY OF
St. LOUIS,
STATE OF MISSOURI.


BLOODY ISLAND.
Survey No. 57 & Cont. 150 acres property of old ferry Company.
Part of 110 acres property of old ferry Co.
Road to Edwardsville
Road to Carondelet
Road to Bellefontaine
Road to Cahokia
Road to Illinois Town
Road to Belle Fontaine
Road to Bellefontaine
Road to Cahokia
Road to Carondelet
Road to Illinois Town
Road to Edwardsville
Head of Chouteau's Island
Old ferry Landing 24 March 1842.
Channel from Winter's farm 1842 & 43.
Sandy
Levee
Wooding
Boarding
Dwelling
Stables
Ferry Road
Ferry Road
Ferry Road

STATE OF MISSOURI.

BLOODY ISLAND.

STATE OF ILLINOIS.

Head of Bryans Island

Old ferry landing 24 Dec 1842.

Old ferry landing

Sand bar Winter of 1842 & 43.

Water from 1818

Landing

Survey No. 2174 Contg. 150 acres property of old ferry Company.

Survey No. 2176 Contg. 150 acres property of old ferry Company

Part of 140 acres property of old ferry Co.

Old ferry Comp. property

Road to Edwardsville

Boarding

Stable

Woodshed

Landing

Landing

Survey No. 789

OLD TOWN

The Survey of Bloody Island according to the old lines was made in 1818.

Surveyed Sept. 1843. The Line was drawn a half foot above low water mark at the time.

Scale 660 feet to the inch.

Drawn by Lewis Winkelmann November 1843.

State of Illinois } Set.
County of St. Clair } I Theodore Engelmann Clerk of the Circuit Court within and for the County of St. Clair & State aforesaid, do hereby certify the foregoing to be a correct copy of a plat in my office as exhibited Feb 20 to the Bill of complaint of Wm. L. H. Ash & others against the County of St. Clair and James Harrison.

In testimony whereof I have hereunto signed my name and affixed the seal of said Court at office this 23 day of September A.D. 1843

Theo. Engelmann

Seal

1

Map of the half breed Sac & Fox Reservation

Township 67 North.

Township 66 North

Township 65 North

Des Moines R.

Island

Des Moines

Raccoon Fork

Fort Pike

Capt. James White

Forsyth's old tradinghouse

Head of the Rapids

Old road from Fort Madison to Fort Atkinson and Council Bluffs

Old road from Fort Madison to Iowa River and Iowa Settlements

McBrides

Forsyth's old Grocery Sec 19

Garlands

Indian Field

Sec 8! Steamers

Chimney Cr

Rapids

Montebelle

Fort at the Rapids Stillwaters Field

Fort Reservation 660 rds sq.

Hancock County Illinois

Scale of 80 Chains to the

Area of the Half Breed Sac & Fox Reservation,

Set down on this Map

	acres
Tract N. 65 N. R. 4 W. inclusive of that part of the Town Reservation which lies in said Township	91. 25
Tract N. 66 N. R. 4. W.	251. 71
Tract N. 67 N. R. 4. W.	1274. 08
Tract N. 64 N. R. 5. W.	153. 90
Tract N. 65 N. R. 5. W. including the other of the town reservation (part of which lies in Town. R. 4 W.)	20210. 09
Tract N. 66 N. R. 5 W. including the survey of Thomas Rissick	20538. 23
Tract N. 67 N. R. 5 W.	15919. 27
Tract N. 65 N. R. 6. W.	5098. 52
Tract N. 66 N. R. 6. W.	21211. 17
Tract N. 67 N. R. 6. W.	17332. 46
Tract N. 66 N. R. 7. W.	2808. 97
Tract N. 67 N. R. 7. W.	14003. 87
Tract N. 67 N. R. 8. W.	194. 55
Total =	119 088. 27

St. Louis July 5th. 1833

The above map of the Half Breed Sac & Fox Reservation is conformable to the field notes of the survey thereof as executed by me in the years 1832 & 1833 in pursuance of my contract with William Clark superintendent of Indian affairs – dated January 26th. 1832

Jenifer J. Speigg surveyer of the Half Breed Sac & Fox reservation

General Land Office

2

ba. 16

Township 66 North

Township 65 North

Township 64 North

Sec 33

Des Moines R.

Des Moines

Saint Missouri

Island

Rivier des Moines

Port Dillon

Sec 12

Mc Brides

Sec 19 Garlands

Annie Field

Capt James White

Head of the Rapids

Sec 19

Sec 22

Sec 21 St Amants

Sec 19

Sec 30

Fort of the Rapids Stillwells Field

Town Reservation 640 Acres

Village Keokuck

Montebello

Rapids

Mississippi River

Fort Edwards

Hancock County Illinois

Scale of 80 Chains to the Inch

Set down on this Map

	acres
Tract T. 65 N. R. 4 W. exclusive of that part of the Town Reservation which lies in said Township	91.25
Tract T. 66 N. R. 4. W.	251.71
Tract T. 67 N. R. 4. W.	1274.08
Tract T. 64 N. R. 5. W.	153.90
Tract T. 65 N. R. 5. W. including the whole of the Town reservation (part of which lies in T. 65 N. R. 4 W.)	20210.09
Tract T. 66 N. R. 5 W. including the survey of Thomas Riddick	20538.33
Tract T. 67 N. R. 5 W.	15919.27
Tract T. 65 N. R. 6. W.	5098.32
Tract T. 66 N. R. 6. W.	21211.17
Tract T. 67 N. R. 6. W.	17332.46
Tract T. 66 N. R. 7 W.	2808.87
Tract T. 67 N. R. 7 W.	14003.87
Tract T. 67 N. R. 8. W.	194.55
Total =	119.088.27

St Louis July 5th 1833

The above map of the Half breed Sac & Fox Reservation is conformable to the field notes of the survey thereof as executed by me in the years 1832 & 1833 in pursuance of my contract with William Clark superintendent of Indian affairs – dated January 20th 1832

Jenifer D. Prigg surveyer of the Half Breed Sac & Fox reservation

General Land Office
July 30th 1834

I hereby Certify that the above is a true Copy of a plat received at this office from the office of Indian affairs War Department with the field books of the survey of the Lands of the Half breed Sac & Fox Indians

In Testimony Whereof I have hereunto Subscribed my name and Caused the Seal of this office to be affixed at the City of Washington on the day and year above written

James Whitcomb
Commissioner

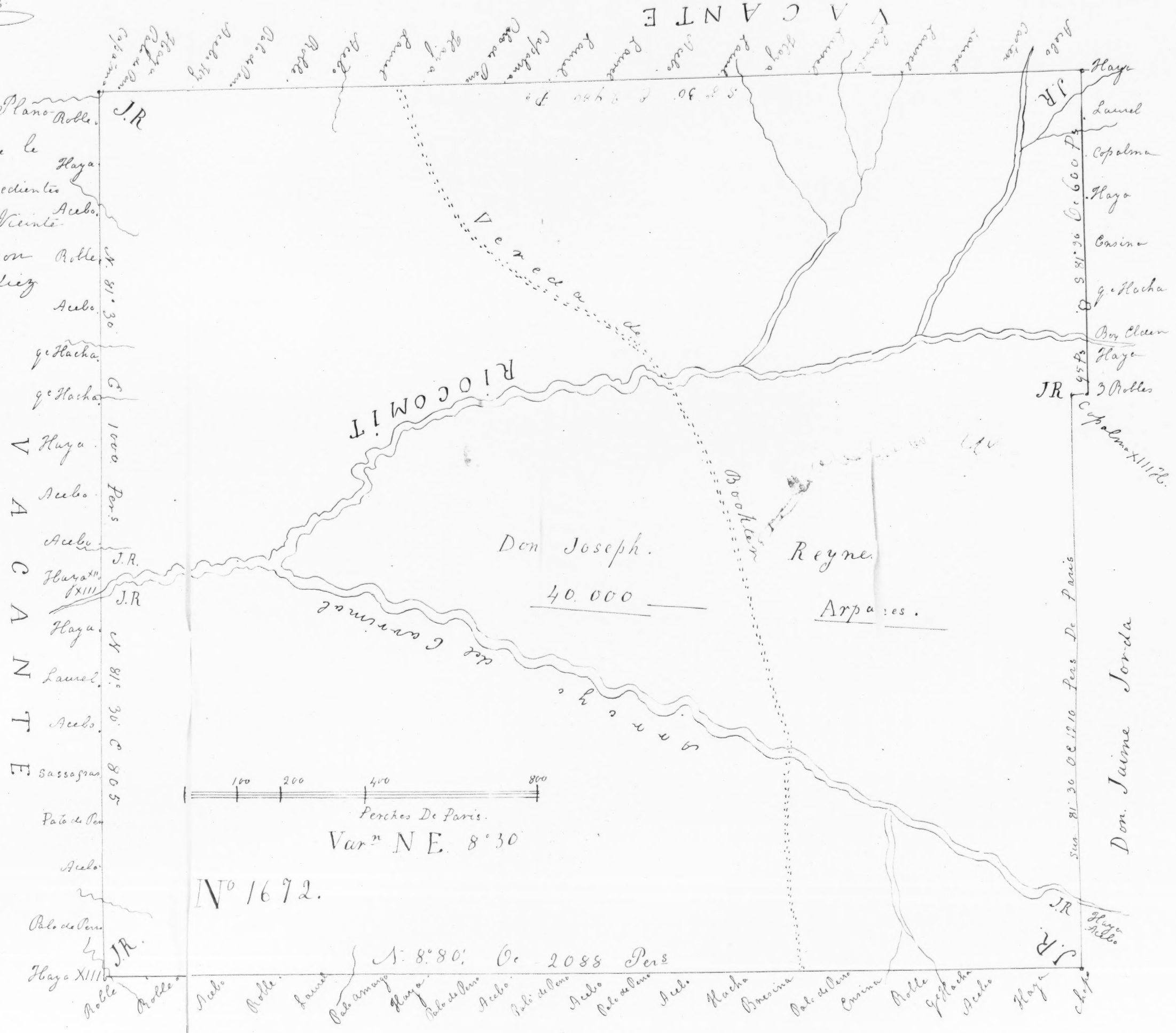
2

N 1722 U. S. Vs Reynes pa 8

Va. 6.

Certifico el presente Plano
copiado del original que le
halla agregado a la expediente
del asunto y firmado Vicente
Sebastian Pintado con
el numero 1679 diez
Diciembre 1803. —

Carlos Trudeau
Agrl. —



Louisiana Sno 1801

Banco del Bayou San Juan

10 20 30 60 120 Toises

4 arpentes

Nº 1470

PLAN de la propriété

appartenant cidevant à M Fleytas, et dont
partie appartient maintenant à
Mr Renton
avec les titres a l'appui



5

Dressé par l'arpenteur soussigné
N.lle Orléans le 3 juin 1837
(Signé) Allon d'Hemecourt

Voyer de la 3d municipalité

This is plan A referred to in
page 14 of the record
N.O. Sept 23d 1847
Eugene Forstall
Clerk.

pa. 86.

Partie de la Ville de Bordeaux. Pl. 12me Volets.

P

N

Q

Appartenant à la commune de la ville

Monsieur de Morand
le 12 Mars 1781

Bizquetière

Concession Morand
19 Février 1756.

Bastion de Tourny, appartenant à Monsieur de Caillejeu

Bastion de Tourny, appartenant à Monsieur de Bourbeville

Bastion de Tourny, appartenant à Monsieur de Bourbeville

Jean de Gaumont et Jeanne Perrette Thomas
Conjoints dudit
Le 20 [illegible]

6

HABITATION GRAVIER.

Succession de

PLAN

de l'habitation de Mr

DE PONTALBA

située sur le Chemin de St Jean

distribuée pour être vendue en divers Lots.

Nlle Orléans le 9 Jier 1812.

Signé Lafon, arpenteur pour la ville et comté d'Orléans.

Pour copie conforme à l'original déposé en l'étude de feu Pedesclaux, de son vivant Notre public et dont les archives sont maintenant en possession de L.J. Caire, not.re pub.re Nlle Orléans le 12 Février 1838.

Signé Jos. Filhiol Jug.e

TITRE

RECONNU ET CONFIRMÉ PAR LES COMMISSAIRES aux terres.

La profondeur de cette habitation a été déterminée par Mr OLIVIER DEVEZIN. arpenteur du Roy en l'année 1757. Lequel déclare dans son proces Verbal de la même année que les lignes doivent s'étendre jusques aux terres des héritiers de PRADELLES. acte du 25 Juin 1757. adjudication à LATILLE avec sa profondeur.

précédemment et du temps de la compagnie avant les demandes de Lebreton.

Gauvry vend à Bossier le 5 9bre 1728 cette terre de 10 Arp. de face sur 40 de profondeur.

L'Arpt du comté B. LAFON fournira d'autres titres si le cas le requiert.

Limite des Héritiers PRADELLES maintenant Gravier.

Borne en cypre plantée en 1806 par B. LAFON à 37 Ats 15 toises du Chemin.

Borne.

Borne.

Borne en cypre distante de 34 Arpents 20 Toises du chemin du Bayou St Jean.

lignes d'anticipation de Carlos Guardiola

Borne en Cypre 915-T.

Borne en Cypre 165-T.

Fossé

Fossé

Queux

Bassin

DELET.

p. 88

7

PLAN

de l'habitation de Mr

DE PONTALBA

située sur le Chemin de St Jean

distribuée pour être vendue en divers lots.

N.lle Orléans le 9 Xbre 1812.

Signé Lafon, arpenteur pour la ville et comparé d'Orléans.

Pour copie conforme à l'original déposé en l'étude de feu Pre Pedesclaux, de son vivant Nre public et dont les archives sont maintenant en possession de soussigné, notre pub.e N.lle Orléans le 12 Février 1838.

Signé Jos Pilie
Supt

Fossé

Borne en Cypre 155 T.

Fossé

Queenu aux

Fossé

CANAL DE CARONDELET.

Bassin

Borne en Cypre 480 T.

Chemin projetté par la compagnie de navigation.

Borne en Cypre

Chemin de M.r Leboeuf d'Orgenois

Borne en Cypre

Borne 220 T.

130 pi.

300 pi.

EMPLACEMENT
d'une Surface de 2500 T.
reclamée par
la Corporation
de la N.lle Orléans.

Canal cela Limite

Borne en Cypre 136 T. 3 pi.

Chemin de M.r l'Hopital.

Borne 86 T. 3 pi.

Ces bornes ont été plantées sur la même direction que celles de Mr. Andry, arpenteur

Charles Orillon

Ligne déterminée par Mr. LAVEAU TRUDEAU, arpr. et co
Sur un 30° Ouest-suivant les repertoires du 1er 8bre Avril 1793
Ordre de l'Alcade ordinaire Jean Bonaventure Morale

N.o 1 | N.o 2 | N.o 3 | N.o 4 | N.o 5 | N.o 6. | N.o 7. | N.o 8 | N.o 9 | N.o 10 | N.o 11.

62 T

droits de Mr. Lebreton d'Orgenois.

Charles Griffon

CANAL DE CHEMIN

Borne en Cyprès

Chemin

Borne en Cyprès 480 F.

Borne 220 F.

150 pc.

300 pc.

EMPLACEMENT
d'une Surface de 2500 F.
reclamé par
la Corporation
de la Nlle Orléans.

Chemin reserve

Borne en Cyprès 480 F.

Borne 960 F. pc.

Chemin de N. l'Hopital.

Ces bornes ont été plantées
en la même alignement que
celles de M. Autry, arpenteur
pour le compte de la
Ville qui fut faite en
Janvier 1806.

N°. 6. N°. 7. N°. 8 N°. 9 N°. 10 N°. 11.

Rue St Jean Baptiste

Rue St Jean

Rue St Claude

Borne 120 F.

Chemin

Borne 120 F.

N°. 1 N°. 2 N°. 3 N°. 4 N°. 5

32 F.

PLAN DES TERRES
DE
PIERRE DESCLAUX.

Ligne determinée par Mr LAVEAU TRUDEAU, arp. et courant
S 21 d 50' Ouest suivant les arpentages du 4 et 5 Avril 1783 faits par
Ordre de l'Alcalde ordinaire Jean Bonaventure Morales. —

7

Plan V. referred to in Articles of Agreement between Peter Smith & Robert Gilmor

Y

A Sketch of the Ground Lots between Prince and King Streets, north of

Prince Street

A

No. 2

B

No. 3

C

No 4

D

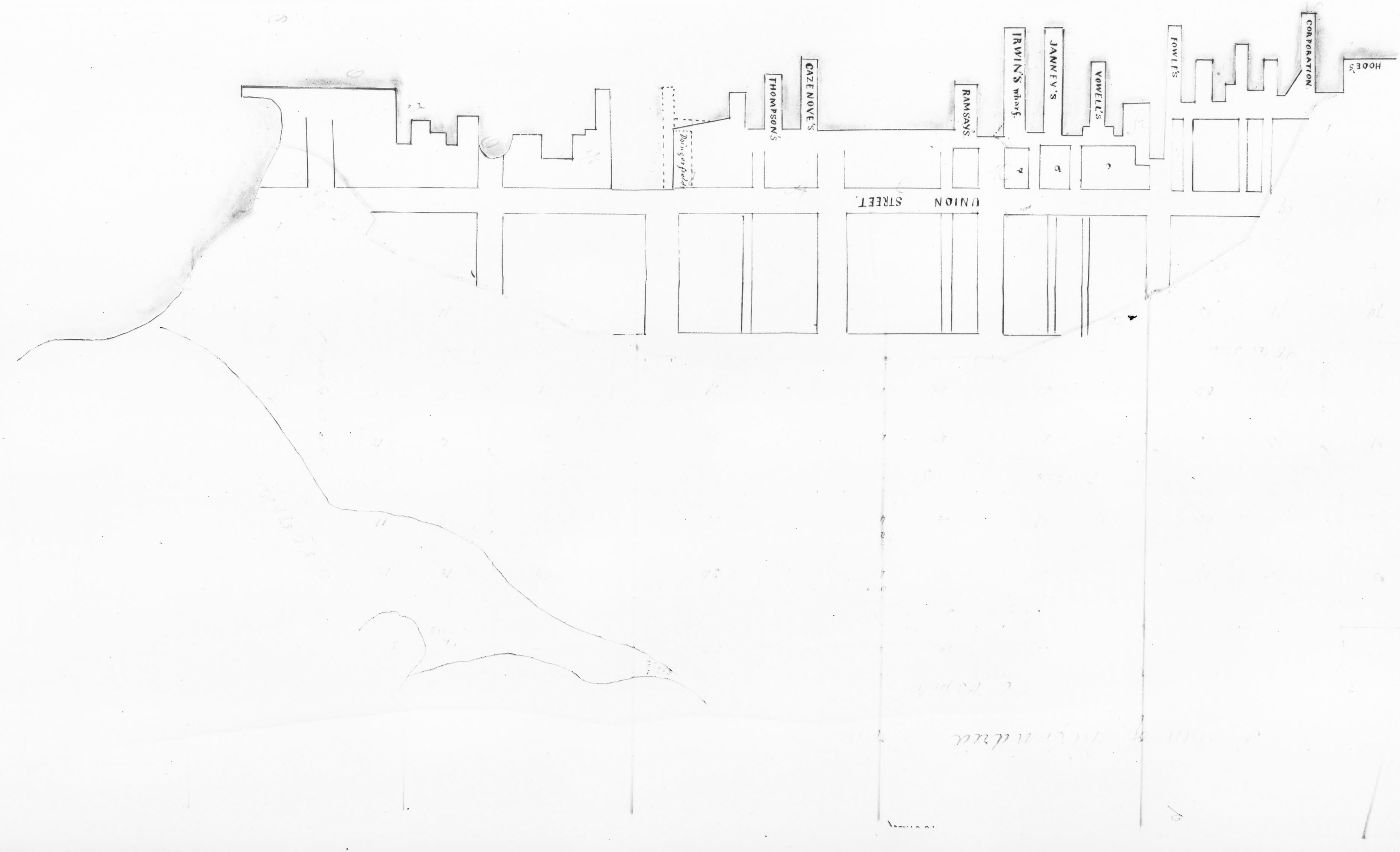
30 Feet

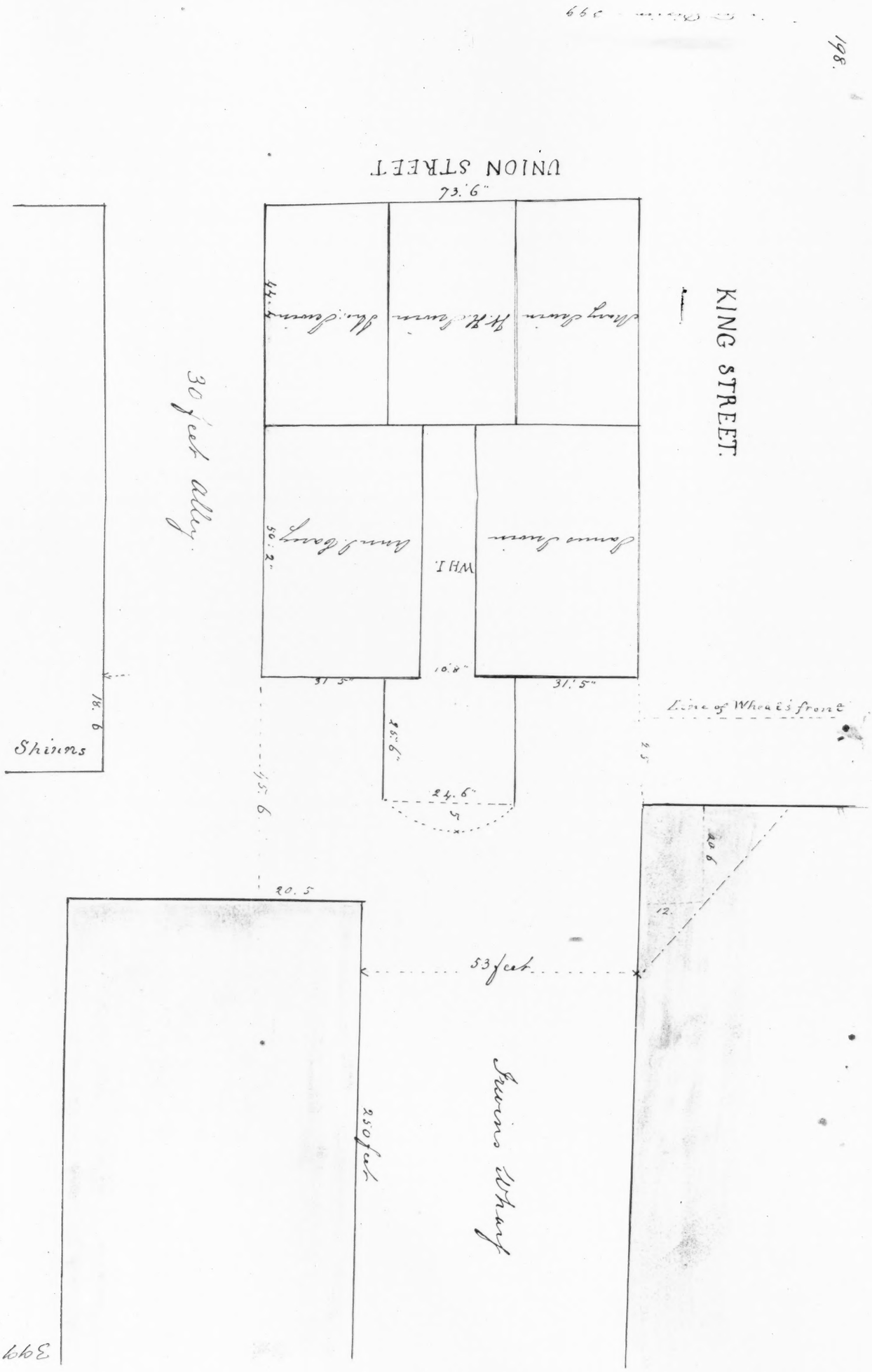
King Street

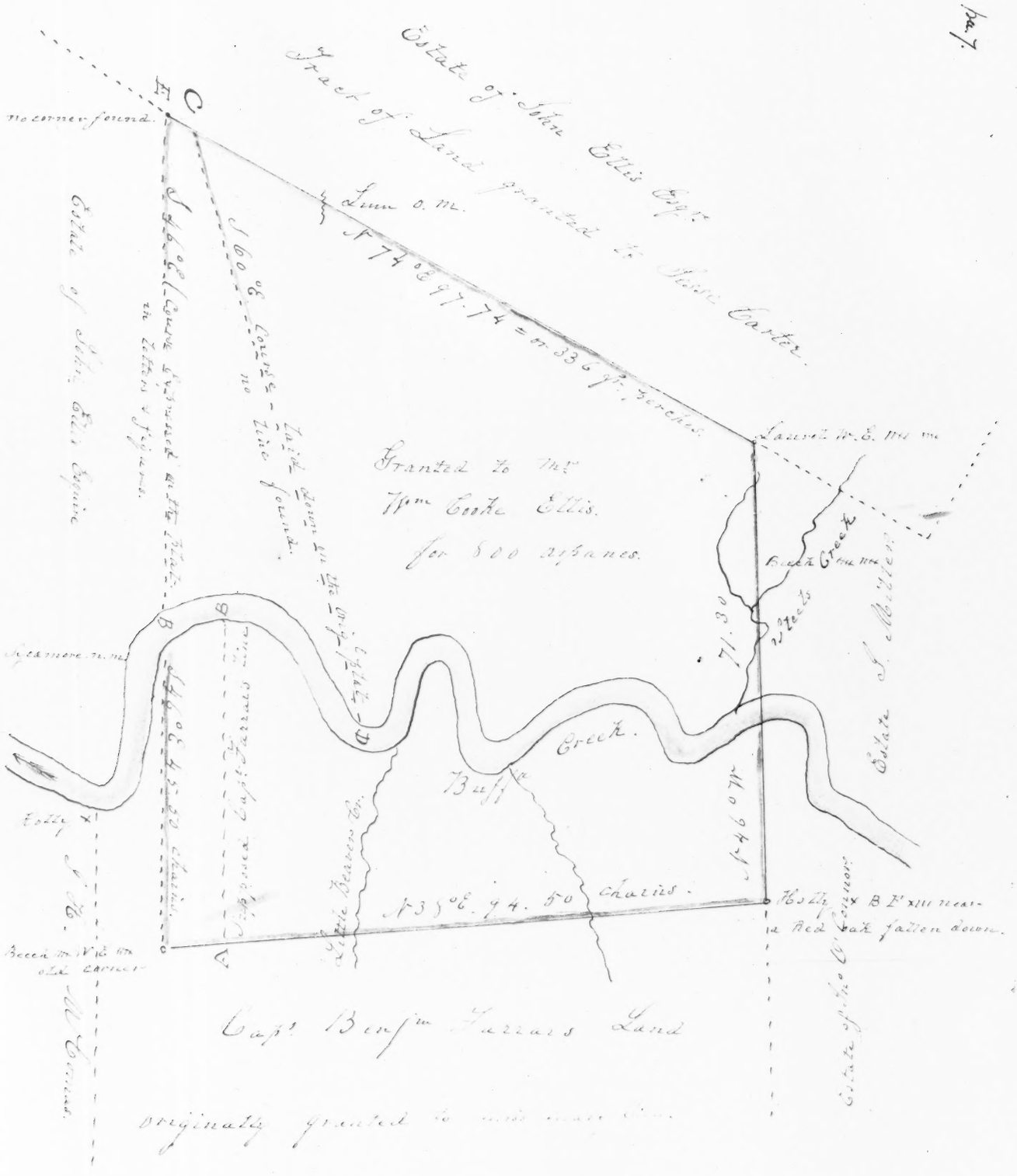
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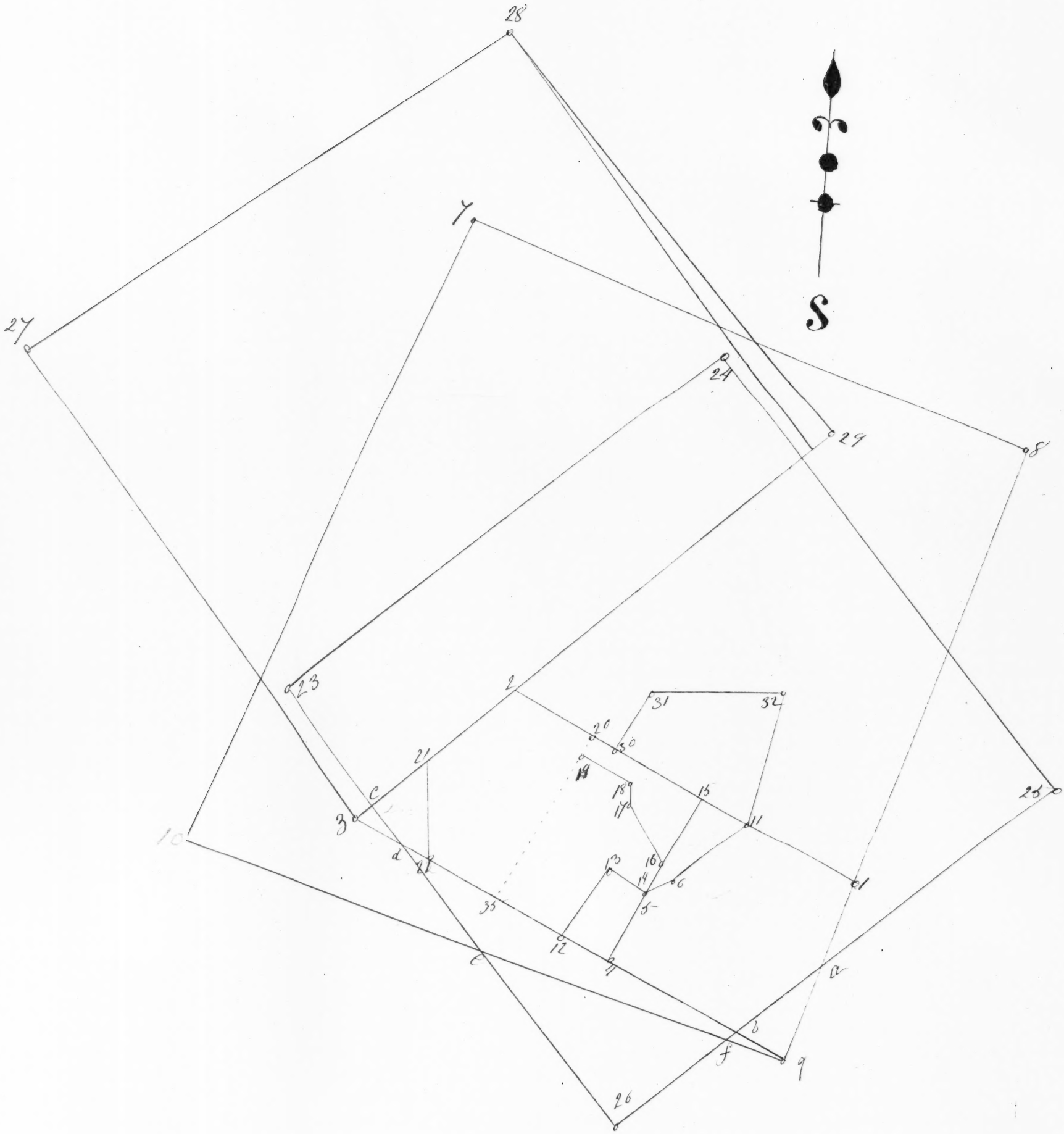
Lot


THOMPSON'S
CAZENOVE'S
RAMSAYS
IRWIN'S wharf
JANNEY'S
VOWELL'S
FOWLE'S
CORPORATION
HOOE'S
UNION STREET


198.
UNION STREET
73.6"
KING STREET.
30 feet alley.
Shivers
18.6
50.2"
WHI
31.5"
10.8"
31.5"
18.6"
24.6"
Line of Wheat's front
20.6
12.
20.5
53 feet
250 feet
Stevens Wharf
3.99


Estate of John Ellis Esqr.
Tract of Land granted to Isaac Carter.
Sum o. ac.
N 77° 30' E 97.74 = or 336 Pr. to cedar
no corner found.
Granted to Mr.
Wm Cooke Ellis.
for 800 Acres.
Estate of John Ellis Esquire
Creek.
73 Acres
N 35° E. 94. 50 Chains.
Capt. Benjn Farrars Land
originally granted to

2
1
7
3
8
D
J
m
4
6
F
10
Ben Umstead
Tracy
Rose Hopper
E
G
I
g
h
C
9


28
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a
b
f
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26